

The complaint

Mr W complains that Phoenix Life Ltd failed to provide valuation documents in relation to his pension.

What happened

Mr W was originally a member of his workplace occupations pension scheme (OPS). He joined this in 1988 but was then advised by Phoenix in 1991 to leave this and instead set up a new private pension with them, which he did. Mr W then stopped paying into the Phoenix pension in 1995, and started again paying into his OPS, continuing until May 2002 when he moved to a new job.

The sale of Mr W's Phoenix private pension was reviewed by them as part of the industry-wide pension review in 1997. They concluded they had mis-sold him a private pension. They agreed to take the necessary steps to place Mr W (or more precisely, his OPS) back in the position it would have been in had he remained in it, unbroken, for the duration of his employment. Phoenix provided a guarantee certificate which set out that obligation.

Shortly after this, Phoenix approached the Trustees of Mr W's OPS to ask how much they needed to pay to the OPS to allow Mr W to be fully reinstated into the scheme. The Trustees told Phoenix, in 2002, the amount was £5,325.95.

Phoenix then undertook a calculation to work out how much he'd paid into their plan – the purpose being to work out if he'd actually paid *more* whilst in the Phoenix plan than he would have done had he remained in the OPS. In other words, had he been made worse off during that 'reinstatement period'. Phoenix calculated that he did pay more than he would have done if he'd remained in the OPS. This would also need to be paid to Mr W's pension as part of the appropriate pension review redress.

Phoenix revalued the amounts in question and calculated Mr W had paid an extra revalued amount of £7,093.09, meaning the total amount they needed to pay to the OPS Trustees was £12,436.16 (£5,325.95 plus £7,093.09, plus interest). As only £5,325.95 was needed to fully reinstate Mr W into the OPS, the extra amount was used to purchase a separate Additional Voluntary Contribution ("AVC") policy, which would provide an extra pension at retirement.

Many years later, Mr W became concerned that the reinstatement process was flawed. He'd approached the OPS Trustees for a retirement quote, only to be told that certain elements of his OPS (relating to his Guaranteed Minimum pension, or 'GMP') hadn't been included. There followed considerable amounts of further exchanges between Mr W, Phoenix and the OPS Trustees. Phoenix acknowledged they hadn't fully considered all elements of a letter the OPS Trustees had sent which set out the reinstatement steps/calculations that needed to be done. Phoenix agreed to make further enquiries with the OPS Trustees and undertook to make any further payment to the OPS Trustees if it was established one was necessary – although the OPS Trustees told Phoenix they don't believe there is a shortfall in his pension.

Mr W was unhappy with this situation, as he felt he was still no closer to finding out if there was a shortfall that needed rectifying, so he brought a complaint to our service and in respect of which I issued a Final Decision (“FD”) on 13 January 2023.

That FD recognised Mr W’s continued frustrations, but also explained that this Service is unable to check the various calculations that have taken place over time, or to check if the amounts calculated and paid in 2002 were correct. But I did recognise that Phoenix hadn’t treated Mr W fairly in that matter and upheld his complaint, requiring them to do the following:

- Once Mr W advises Phoenix of his intended retirement date, they must revisit the reinstatement calculations, and make enquiries with Mr W’s OPS Trustees and/or HMRC as necessary, to definitively calculate what further GMP-related sums, if any, need to be paid by them to his OPS Plan to fully return him to the exact position he would have been in had he remained in his OPS for an unbroken period between August 1988 and May 2001.
- Ensure Mr W’s pension guarantee remains in force until such time that this exercise has been completed.
- Pay for Mr W to engage his own actuary, should he request this, to check the calculations undertaken as part of this exercise.
- Pay Mr W an extra £500 compensation for distress and inconvenience caused.

Mr W accepted this FD, at which point it became legally binding on Phoenix. In the subsequent months, Mr W reached out to Phoenix to obtain updated retirement value and transfer quotes. Phoenix agreed to send him the necessary paperwork. However, this didn’t happen, because the policy itself was no longer ‘live’ – as it had been reinstated back into the OPS in 2002. Phoenix admitted they should have told Mr W this at the time.

Further communications took place between Mr W and Phoenix, with Mr W essentially revisiting the key complaint points addressed in his earlier FD. He again referenced the calculations that had been done at in 2002, and his concerns about the GMP not being taken account of in the 2002 reinstatement exercise.

Mr W spoke with Phoenix’s ‘guarantees’ team in October 2023, who explained that they’ll carry out the required review once he’d commenced taking his benefits under his OPS policy. And following a further conversation on 7 November 2023, Phoenix agreed to provide an estimated calculation to include the missing GMP (waiting to be completed as at 17/11/23). But, Phoenix explained that with Mr W’s intended retirement date not being until 2028, any calculations undertaken now may still not be completely accurate, as they may be affected by early retirement factors. Put another way, the only time a fully accurate calculation can be made is when Mr W does choose to retire, as *actual* figures can be used.

Phoenix said they don’t believe that Mr W’s complaint about the calculation reinstatement issue should be looked at again, as it’s been the subject of a complaint this Service has considered an issued an accepted Final Decision on. However, they accept that Mr W had asked them for updated retirement option packs on a number of occasions since the FD was issued, and their response in relation to those requests had caused confusion.

They didn’t properly explain to Mr W that there is no longer any value in his pension policy with them, although it will remain in force until full (re)calculations can be undertaken when Mr W finally takes his pension benefits. This lack of clarity has caused Mr W to make a number of phone calls to Phoenix to chase up the ‘missing’ retirement options pack. For the inconvenience these mistakes have caused, Phoenix offered Mr W £200 compensation.

Unhappy with this, Mr W raised a further complaint with this Service. However, whilst that complaint confirmed that Phoenix had failed to adequately respond to his requests for a valuation and transfer pack, it also centred around what Phoenix had done when reinstating his pension in 2002, and his unhappiness that Phoenix had not honoured its obligations as set out in the guarantee certificate in previous years.

One of our Investigators considered Mr W's complaint. However, he essentially agreed with what Phoenix had said. He concluded the only 'new' element being complained about was Phoenix not responding to his post-FD requests. And in relation to that issue, he felt Phoenix's offer of £200 compensation for distress and inconvenience (D&I) was fair in the circumstances here.

Unhappy with this, Mr W asked that an Ombudsman consider this complaint afresh, and so it's been passed to me for this purpose, and to issue a Final Decision accordingly.

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.

I want to begin by acknowledging Mr W's continued frustrations regarding what happened when Phoenix reinstated his pension back into his OPS. I appreciate that it continues to be a source of worry for him that he may have lost out as a result of what happened then.

However, he has already raised a complaint with Phoenix, and this Service, regarding what happened then. I upheld that complaint and provided a redress that ensured Mr W would be put back into the position he would have been in had he remained in his OPS for an unbroken period between 1988 and 2002.

I think it's important to reiterate what that means in the context of Mr W's various complaints. Had Mr W remained enrolled in his OPS for that unbroken period, he'd be entitled to a pension based on that unbroken service, as calculated by the OPS. That is the 'bare minimum' position he would have been in, and which his OPS pension will need to honour by virtue of the reinstatement exercise that took place.

Phoenix believe the reinstatement that took place in 2002 has done just that – as well as set up an AVC to provide an extra pension. Mr W disagrees, for reasons that I don't need to explain here.

My previous FD provided for Mr W to engage his own actuary to forensically check the calculations that Phoenix provide when he does choose to retire. Phoenix will engage with the OPS Trustees again as part of that process. It may show, as the OPS Trustees previously stated, the reinstatement was correct at the time, but again it may not. Mr W's appointed actuary will be able to analyse the information provided and challenge it if necessary. And he'll also be able to explain to Mr W the outcome of his analysis – the goal being that this process will help ensure that Mr W has been fully reinstated into his OPS and provide him with the necessary comfort that this has happened. That is, after all, the key issue for Mr W – to be in the same position he would have been in had he remained in his OPS between 1988 and 2002.

Mr W has continued to raise concerns about the calculations used by Phoenix in this exercise, but these are issues that have been dealt with in my previous FD. He's continued to raise concerns about the existence of the guarantee certificate, but this was similarly addressed and dealt with in my previous FD. They can't be revisited in this Decision, or

indeed any subsequent one, and I'd advise Mr W to think carefully regarding any further complaints that he may consider making regarding these issues – they can't be considered again by this Service.

Mr W has mentioned that he has an actuary lined up, and ready to analyse the data as necessary, but this has been frustrated by Phoenix not providing the necessary calculations. That may be the case, but that isn't something I can consider here. It goes to the heart of the previous FD – the analysis of the reinstatement calculations when Mr W informs Phoenix that he intends to retire and take his OPS benefits.

However, I'd highlight here that the obligation is on Phoenix to revisit the reinstatement calculations (and with that, start the process that will lead to the actuary analysis) once Mr W *informs* them of his intended retirement date, and not once he's *taken* his benefits – this is what my previous FD provided for, and is legally binding on the basis Mr W accepted it.

I now want to address the remaining element of this complaint – the way Phoenix communicated with Mr W after my FD was issued, as summarised above. Phoenix has admitted that they could have addressed Mr W's subsequent requests better than they did, and having looked at what subsequently happened, I agree.

I don't list all of the communications here, as there is no dispute they occurred, nor what was said or communicated in them. Phoenix were aware that Mr W continued to have questions and uncertainties about the reinstatement process, and could/should have been alive to that in their communications with him. Those concerns and uncertainties will probably continue until his retirement, and Phoenix may wish to think about how best to help manage those concerns, and address any vulnerabilities that may occur/exist, until such time Mr W advises them of his retirement date (and the reinstatement analysis process begins). However, I don't think it's for me, in this new decision, to tell Phoenix precisely how to do that.

Phoenix offered Mr W compensation of £200 in relation to the distress and inconvenience (D&I) their actions have caused in relation to these 'post-FD' communication errors. In assessing whether I think that's fair compensation, I need to take account of our own compensation guidelines. However, the amounts this Service awards for D&I are fairly modest in value.

Our D&I awards are not designed to punish a business, but rather to put a monetary value on the distress a business' actions have caused. Guidelines setting out our approach to such awards can be found on our website. So, taking account of what I've said above, and having careful regard to our guidelines on this subject, I think the £200 D&I offered by Phoenix is fair in these circumstances. So, I won't be asking Phoenix to do anything further in this case. It remains open for Mr W to contact Phoenix Life to accept that offer, which remains open.

My final decision

For the reasons set out above, I'm satisfied that Phoenix Life Ltd's previous offer to Mr W of £200 compensation for distress and inconvenience caused is fair in the circumstances of this complaint and I don't require them to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 25 October 2024.

Mark Evans
Ombudsman