

## **The complaint**

Mr D says Phoenix Wealth Services Limited (Phoenix) is responsible for delays when he decided to switch his pension to another provider. He says this has caused him financial detriment, trouble and upset.

## **What happened**

Mr D had a Retirement Account with Phoenix. He decided he wanted to switch his benefits to another provider. On 27 September 2023, Hargreaves Lansdown wrote to Phoenix asking it to provide transfer documentation. It received the request the following day. It was actioned on 9 October 2023.

On 10 October 2023 Hargreaves Lansdown used the Origo system to request the switch of Mr D's pension funds. This was placed in Phoenix's queue, with work starting on 16 October 2023. On 18 October, the verification process indicated that enhanced checks would be required.

The person dealing with Mr D's pension switch at Phoenix chased for an update on the checks being undertaken by another team on 25 October 2023. An answer that it was ok to proceed was provided the same day. A disinvestment task was also raised at this time and placed in a queue.

Phoenix says it executed the sale of Mr D's funds on its platform on 31 October 2023. Nine of his funds were sold to cash on 1 November, two funds were sold to cash on 2 November and a final fund was sold to cash on 10 November 2023. A task was raised on 22 November to send his funds to Hargreaves Lansdown. These were sent on 25 November 2023 and acknowledged as being received by his new provider the same day.

Mr D was unhappy with the length of time it had taken for his funds to be sent to Hargreaves Lansdown and he raised a complaint on 8 December 2023.

Phoenix issued its final response on 21 December 2023. It apologised for the switch of his pension taking longer than expected. It said that in the main it had processed his request in line with its target turn-around times. It did accept responsibility for not completing the transaction as quickly as it should've and said it had caused a delay of 11 working days in switching his funds to Hargreaves Lansdown.

Phoenix offered to conduct a loss calculation to understand if the delay it had caused meant he'd lost out on investment growth. And it said it would give him £250 for the distress and inconvenience it had caused him. Mr D rejected Phoenix's offer of compensation and referred his complaint to our Service.

An Investigator considered Mr D's case and upheld it. He concluded Phoenix was responsible for a further three days delay and that it should conduct a loss calculation on that basis. He thought its proposal to compensate him for the distress and inconvenience caused was fair. Mr D disagreed with the Investigator's findings and conclusions. He thought Phoenix had been responsible for much longer delays.

As both parties couldn't agree with the Investigator's view, Mr D's case was passed to me to review afresh. I issued my provisional decision earlier this month and both parties accepted it. So, there is no reason to depart from my initial findings and conclusions.

### **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 D's complaint. I'll explain why.

The first thing I've considered is the extensive regulation around transactions like those performed by Phoenix for Mr D. 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 3, which requires a firm to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
- 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 D's complaint.

I note the Investigator asked Phoenix to provide a copy of its terms and conditions, or any documentation, as applied to Mr D's pension plan, in respect of the service levels he could expect when switching his policy. He wanted to know what he'd been told prior to deciding to move his pension.

The response from Phoenix was initially rather obtuse. But in responding to my provisional decision it provided further clarification, saying:

*"With regard to the information provided about timescales we would like to clarify that we were asked for the timescales which were published rather than our target timescales which we worked to. For reference, as previously confirmed we do not publish our turn-around times but we aim to review and process each stage of a transfer within five working days; investments requested internally as part of transfer process are completed within three working days and disinvestments requested directly by a customer are processed within one working day."*

In its final response to Mr D, Phoenix said the following about its timescales:

*“All correspondence we received is allocated to our work queue in the order of receipt and worked through in chronological order to ensure each customer is treated fairly.”*

It must be right that customers are treated fairly. But this goes beyond putting people in a queue. There are matters of prioritisation of different sorts of transactions and capacity planning which Phoenix is in control of.

I think it's useful at this point to understand what service levels firms should be aiming for when switches take place between providers. In this regard the sector best practice issued by the Transfers and Re-registration Industry Group (TRIG); whose membership included several trade bodies is instructive. In 2018 it published an Industry-wide framework for improving transfers and re-registrations. It noted:

*“When moving investments, assets and entitlements between institutions, people have a legitimate right to expect the industry to execute their instructions in a timely and efficient manner. Furthermore, customers’ service expectations are increasing due to the relative simplicity of switching in other markets. Slow transfers can cause detriment to customers; and the actions of one party can reduce the efficiency of all parties in the chain.”*

In this publication TRIG established what it considered to be reasonable timeframes for firms to adhere to for transactions like those being performed for Mr D. At paragraphs 30-32 the best practice guide said:

*“The TRIG believes that organisations should adopt a maximum standard of two full business days for completing each of their own steps in all transfer and re-registration processes within the scope of this Framework, with the exception of pension cash transfers...”*

*“This approach would enable each counterparty in a process to be equally accountable for ensuring that an efficient transfer and reregistration process is in place. Similarly, organisations will not be accountable for the underperformance of counterparties that are outside of their control.”*

*“This window would comprise two full business days, with a ‘business day’ defined as a day when the London Stock Exchange is open. Each firm would process its step by 2359 of the second business day following the day of receipt. This means that, in practice, some firms might have more than 48 hours to process their step, e.g. if they received an instruction at 0900 on day one, and did not complete their step until 2300 on day 3.”*

I understand that the standards established by TRIG are being taken forward through the STAR industry accreditation, whose website states:

*“Industry systems and processes are inconsistent and transfer timeframes vary between providers. Service expectations are increasing due to the relative simplicity of switching in other markets and the availability and technological advancements.”*

*“Registration processes in the financial services industry can take between 2 and 450 days which the regulator, industry, consumers and government believe is unacceptable.”*

*“Leading investment and pension trade associations established the Transfers and Re-registration Industry Group (TRIG) to provide a solution. STAR was created as a partnership...to implement and deliver the TRIG framework, which is to define and shape recognised, industry-wide standards to promote good practice in transfers.”*

The work of STAR to build on the framework put in place by TRIG is welcome. And I understand Phoenix is signed up to the initiative.

The regime should provide consumers with a more transparent understanding of what service levels they can expect from different firms. With that knowledge up-front, they will be better placed to understand matters such as service levels, fund performance and price, and any trade-offs between these, when selecting their providers.

I should note, I've not seen evidence Hargreaves Lansdown were responsible for holding up the switch of Mr D's pension funds. He seems content with its service. Indeed, the evidence provided indicates it turned around those elements of the transaction it was responsible for in about a day.

I'm satisfied the TRIG framework, applied pragmatically, is a fair and reasonable guide of what should've been possible in this case. In its final response when referring to market movements and any potential impact on Mr D's funds of any delay, Phoenix said:

*"...For reference, the minimum timescale, assuming that no additional checks are required, for the sale of funds from the receipt of a transfer request is eight working days. From the 10 October 2023, this means the first date for selling the fund -would have been 20 October 2023..."*

Considering all these matters, I've attempted to construct a notional timetable of events had Mr D's switch of pension been carried out in a reasonable time. Obviously, it can't be scientific. But I do think it's fair, pragmatic and tries to avoid the benefit of hindsight.

I think Phoenix should've acted on Hargreaves Lansdown's request of 27 September 2023 to provide transfer documentation by 3 October 2023. And had it done so I think Hargreaves Lansdown would've actioned the paperwork the next day (as it did originally), so that takes us to 4 October.

If I accept what Phoenix told Mr D about the minimum timetable of eight working days between receipt of the transfer request to the sale of funds, and that in this case further verification checks were required, allowing for another two working days to the overall timetable, then I think Phoenix should've effected the sale instruction on its platform on 19 October 2023, rather than 31 October.

Phoenix seems to accept between placing the sale instruction on its platform and the funds being sold to cash should've taken 2 working days - so for Mr D by 23 October 2023. If I then add 3 further working days for finalising payment authorisation and initiating the switch of funds through the Origo system, that gives us a date for receipt of the funds by Hargreaves Lansdown of 26 October 2023, rather than 25 November.

## **Putting things right**

I'm upholding Mr D's complaint, 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's failings. Redress isn't always a scientific matter. But I do think the framework I've set out below is fair and reasonable.

I require Phoenix Wealth Services Limited to assess what Mr D's notional position would be now had it provided a more effective service. In doing so it should assume the instruction to sell to cash was provided on 19 October 2023 and not 31 October. And that his funds were received by Hargreaves Lansdown on 26 October rather than 25 November 2023.

So it needs to understand what his pension pot would be worth at the date of calculation had it been invested in the same funds in the same proportions, at the prices available at that earlier date. This is value A.

Phoenix Wealth Services Limited should then assess Mr D's position as it stands, for the relevant funds within the scope of this dispute, so making adjustments for any additional contributions or withdrawal of monies that he's made, so as to arrive at a like for like comparison. This is value B.

If value A is greater than value B, Mr D has suffered a financial loss. Then Phoenix Assurance Company Limited will be required to make good this sum, less any redress it has already paid. It will need to do so within 28 days of being notified Mr D has accepted my final decision. After this it will need to add 8% simple annual interest on the outstanding sum.

If there is a loss, Phoenix Wealth Services Limited should pay into Mr D's pension plan, to increase its value by the amount of the compensation and any interest. Payment should allow for the effect of charges and any available tax relief.

Phoenix Wealth Services Limited shouldn't pay the compensation into Mr D's pension plan if it would conflict with any existing protection or allowance. If it isn't able to pay the compensation into his pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid.

The notional allowance should be calculated using Mr D's actual or expected marginal rate of tax at his selected retirement age. For example, if Mr D is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax.

Phoenix Wealth Services Limited should provide Mr D with a breakdown of the redress calculations in a clear and simple format.

If value B is greater than value A, Mr D hasn't suffered a financial loss and Phoenix Assurance Company Limited will just need to give effect to my provisions for distress and inconvenience.

When I'm considering a complaint like Mr D'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 Wealth Services Limited accepted it got things wrong for Mr D and that its failings had caused him trouble and upset. It apologised and offered him £250 for this. I think that award is fair and it should honour that payment if it hasn't done so already.

**My final decision**

I'm upholding Mr D's complaint. I now require Phoenix Wealth Services Limited to put things right in the way I've directed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 18 October 2024.

Kevin Williamson

**Ombudsman**