

Ombudsman's Determination

Applicant	Mr Y
Scheme	Phoenix Life (the Plan)
Respondent	Phoenix Life (Phoenix)

Outcome

1. I do not uphold Mr Y's complaint and no further action is required by Phoenix.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr Y has complained because he believes Phoenix has failed to apply annual increases to his annuity. He believes he has incurred a financial loss as a result.

Background information, including submissions from the parties

4. Mr Y was a deferred member of his occupational pension scheme (**OPS**). In May 1990, following advice from one of Phoenix's representatives (Phoenix was known as Pearl at the time), Mr Y transferred his benefits from his OPS to the Plan.
5. In 1998, as part of the industry wide pensions review, Phoenix established that Mr Y had been disadvantaged by the advice he had received to transfer his OPS to the Plan. Consequently, it offered to compensate Mr Y by enhancing his benefits in the Plan by 11.25%.
6. On 14 August 1998, Phoenix sent Mr Y the offer to enhance his pension and on 31 August 1998, Mr Y accepted the offer.
7. Mr Y retired on 6 April 2001 and commenced receiving an annuity from the Plan. The annuity Mr Y purchased was a standard annuity which was not subject to annual increases.
8. On 12 March 2018, Mr Y wrote to Phoenix concerning his benefits in the Plan. He explained that during a recent review of his old files, he found some paperwork relating to his OPS. He said that the annuity from the Plan was issued in lieu of the benefits provided by the OPS and explained that the transfer information form (**TIF**)

he had received, said that his OPS pension would increase in payment, annually. Mr Y said that as there had been no increases applied to his annuity, it was evident that the conditions of the transfer had not been met, and he asked for an explanation.

9. On 6 April 2018, Mr Y wrote to Phoenix again, as he had not received a response. On 17 April 2018, Mr Y made a complaint concerning his query to Phoenix.
10. On 5 July 2018, Phoenix responded. It explained the background to his complaint and also explained that the sale of Mr Y's policy was investigated in 1998, as part of the industry wide pensions review.

11. Phoenix said:

"Where a loss assessment was carried out, whilst we take into consideration the benefits that you would have received under your OPS we never guaranteed that the benefits finally available from [the Plan] would match those that the OPS would have provided."

12. Phoenix gave reasons for why it could not guarantee that the Plan would match the benefits of the OPS. It also explained that through the loss assessment, it ensured the value of the Plan was at least as much as the value of the OPS benefits Mr Y had given up.

13. Phoenix also said:

"The policy was set up on a different basis than your [OPS] and it was not a condition of the policy that your pension would automatically increase annually. If you had specifically requested an escalating annuity at claim stage, then we could have provided a quotation for you..."

At claim stage, our obligation was to provide you with quotations on the standard basis as set out in your policy schedule. The standard basis is a level annuity with a 50% annuity payable to your wife in the event of your death..."

14. Phoenix also explained that if Mr Y had purchased an escalating annuity in 2001, his initial annuity payment would have been significantly lower than the annual annuity he is currently in receipt of. Phoenix explained that its actuarial department had carried out a comparison of the annuity Mr Y has, with an escalating annuity and, the actuaries confirmed that, to date, Mr Y was paid significantly more, than he would have been paid, had he purchased an escalating annuity.
15. Phoenix accepted that it had not previously provided Mr Y with an explanation as he had requested. Consequently, in recognition of the delay in dealing with his complaint, it offered him £150 compensation.
16. Dissatisfied with Phoenix's response, Mr Y referred his complaint to this Office. In his submissions to this Office, Mr Y included a copy of the TIF, a copy of the Policy Schedule, and a letter he received from Phoenix in 1998, which informed him that he

had been financially disadvantaged by the advice he had received to transfer the benefits of his OPS to the Plan.

17. In response to Mr Y's complaint, Phoenix provided copies of all correspondence with Mr Y and, Phoenix reiterated what it said in its 5 July 2018 letter to Mr Y.

Adjudicator's Opinion

18. Mr Y's complaint was considered by one of our Adjudicators who concluded that no further action was required by Phoenix. The Adjudicator's findings are summarised below:-

- When Mr Y transferred his benefits from the OPS to the Plan, any benefits he was entitled to from the OPS were no longer applicable. This included the type annuity he could receive.
- The Schedule Mr Y received from Phoenix dated 18 May 1990, explained the benefits he could get at retirement. The Schedule also explained that the Plan was in lieu of the OPS benefits. Therefore, it did not say that Phoenix would, subsequent to the transfer, pay him the same benefits he was entitled to from the OPS. Regrettably, the annuity Mr Y purchased from Phoenix, 17 years ago, is not subject to increases. Consequently, it was the Adjudicator's view that Phoenix is paying him the correct annuity.
- Phoenix contacted Mr Y in 1997/1998, as a result of the industry-wide pensions review, into mis-selling of personal pensions. The review showed that Mr Y was financially disadvantaged by the advice he had received to transfer his OPS benefits to the Plan. As a result, he was offered compensation which he accepted, and the value of his Plan was increased. The compensation was based on the outcome of the review at that time and, it did not place an obligation on Phoenix to complete further reviews or to pay him further compensation.
- In addition, Mr Y has been in receipt of the annuity for 17 years. Therefore, it was the Adjudicator's opinion that it would not have been unreasonable for him to have contacted Phoenix much earlier, if he felt it had set up his annuity incorrectly.

19. Mr Y did not accept the Adjudicator's Opinion and in summary said:-

- In a letter dated 18 April 1997, he was notified that the regulator at the time had asked all insurance companies to review pension policies to make sure that they had been correctly sold.
- After the review, and in a letter dated 30 October 1997, it was conceded that the value of his benefits in the Plan was lower than what it would have been, had he remained in the OPS.

- Offers of compensation were made, the final offer of an 11.25% increase in value, was in a letter of 14th August 1998, and was to “match the value of the deferred benefits you would have had, had you not transferred to Pearl....”.
 - He also received a leaflet headed “WE WANT TO COMENSATE YOU” which informed him that he had been financially disadvantaged and that he had lost out because of the transfer.
 - This seemed to be very clear and unequivocal to him and he accepted it at face value and in good faith.
 - In 1998, compensation was based on matching the benefits that he would have had, had he not transferred his OPS benefits to the Plan. The benefits of the OPS included annual incremental increases to the pension.
 - He has not made a complaint concerning the advice he received, only that the incremental increases had not been applied to the pension, as part of the compensation he was offered.
 - He does not believe the Adjudicator has investigated the cause of his complaint.
20. The complaint was passed to me to consider. I agree with the Adjudicator’s Opinion and I will therefore only respond to the key points made by Mr Y for completeness.

Ombudsman’s decision

21. There is no dispute that Mr Y’s Plan was mis-sold. Mr Y was compensated for the mis-sale and the compensation he accepted, was to increase the value of his benefits in the Plan, to what it would have been, had he remained in the OPS. The review did not place an obligation on Phoenix, to exactly match each of the retirement benefits Mr Y would have received from the OPS, with the retirement benefits he would receive from the Plan, but to broadly equate the value of the Plan to the value of the OPS.
22. Further, Mr Y has been in receipt of his annuity from Phoenix, since 2001. Therefore, I find that Mr Y ought to have contacted Phoenix much earlier, to query the annuity he was receiving, if he felt it was incorrect. I do not find that it is reasonable for Mr Y to now raise this issue, after being in receipt of the annuity for over 17 years.
23. Consequently, I do not uphold this complaint.

Anthony Arter

Pensions Ombudsman
9 April 2019