

Ombudsman's Determination

Applicant	Mr E
Scheme	Pearl (now Phoenix) Assurance Freedom Bond Pension Plan (the Plan)
Respondent	Phoenix Life Assurance Limited (Phoenix Life)

Outcome

1. I do not uphold Mr E's complaint and no further action is required by Phoenix Life.

Complaint summary

2. Mr E complains that:-
 - He was provided with incorrect information about the type of plan he held in a pre-retirement pack received from Phoenix Life dated 24 May 2018.
 - He had understood he would receive the same benefits at retirement in the Plan as if he had remained in the occupational scheme of his former employer, Thorn EMI, (**the Thorn Scheme**).
 - He is unable to retire early as the Plan value is insufficient to meet the guaranteed minimum pension (**GMP**).
3. Mr E would like to be paid the pension he would have received if he had remained in the Thorn Scheme.

Background information, including submissions from the parties

4. When Mr E ceased employment with Thorn EMI in 1998, he was sent a letter confirming his benefits in the Thorn Scheme. The letter explained that he could leave his benefits in the Thorn Scheme, which would result in an estimated pension at age 65 of £13,352.35 per annum, or he could transfer out of the Thorn Scheme.
5. Mr E received a quotation for a transfer to the Plan. Under the heading of 'Benefit on survival to normal pension date', the quotation said:

“The capital fund which provides the benefit is built up by means of a with profits pure endowment policy which matures at the Normal Pension Date (see note 4 overleaf).”

Note 4 stated the following:

“The total amount shown as available to provide retirement benefits is for illustration only. It is not to be regarded as a forecast since it includes an allowance for future bonuses which depend upon future profits and cannot be guaranteed.”

Note 6, in relation to GMP states:

“The total annual pension payable from the State Pension Age is guaranteed to be not less than the Revalued Guaranteed Minimum Pension of £5,794.36.”

6. Mr E decided to transfer his benefits in the Thorn Scheme to the Plan. The Plan had a nominal capital sum of £25,087. The policy schedule also confirmed that the GMP was £5,794.36 and explained that:

“This policy participates in profits (Series B2) until the year for profits 2017 and any bonuses thereby allocated shall be as additions to the Nominal Capital Sum.”

7. As part of a wider review into potential mis-selling of personal pension plans (**the pension review**), Pearl reviewed Mr E’s benefits. In March 1998, Mr E was sent a letter that said:

“We have calculated the current value of your Pearl benefit is lower than the benefit to which you would have been entitled from your occupational scheme, had you not transferred.”

Mr E was provided with two options:

- Remain in the Plan and have its value increased “to match the value of the [Thorn scheme] deferred benefits [he] would have had, if [he] had not transferred...”. The value would be increased to £49,474.
- To be reinstated in the Thorn Scheme as if he had had never transferred out.

The letter also explained that Mr E was free to seek advice before accepting the offer.

8. Mr E decided to accept the offer to increase the value of the Plan and signed the form to confirm he was, “accepting this offer in full and final settlement of any and all claims you may have against Pearl Assurance PLC arising out of advice that you received from Pearl’s representative which resulted in you transferring from your Occupational Pension Scheme.”
9. In 2003 and 2004, Mr E asked for projections of what his benefits from the Plan might be in November 2013. Pearl said it was unable to provide him with an early retirement projection because the Plan value, coupled with current annuity rates, was insufficient

to provide the revalued GMP at the date required. Pearl explained that it was a legal requirement to provide the GMP revalued to the state pension age.

10. Mr E complained to Pearl in December 2004 as he thought it had failed to honour its agreement to put him in the same position he would have been in had he not left the Thorn Scheme. He complained that the return stated on the Plan quotation was not going to equal the figure stated on the Thorn Pension statement. He also requested an explanation as to why there had been no bonus added over the last three years.
11. In response to Mr E's complaint, Pearl said that he was invested in the With Profits Fund. Pearl explained the smoothing effect of the With Profits Fund on investments, and that performance of underlying investments in this fund affected the payment of bonuses to policyholders. Because of decreasing investment returns, bonus rates had been reduced.
12. On 24 May 2018, Phoenix Life sent a pre-retirement pack to Mr E informing him that he was approaching his intended retirement date and that he would have to soon make a decision about what to do with the fund in the Plan. The letter set out a number of retirement options and stated that the Plan, "may not offer all the retirement options mentioned above."
13. Mr E complained to Phoenix Life in 2018. In Phoenix Life's response, it summarised Mr E's complaint as:-
 - Mr E was unhappy with the pre-retirement pack sent on 24 May 2018 as it was relevant to a personal pension plan and not to the Plan.
 - Mr E understood when he accepted the offer in 1998 that he would receive the same benefits at retirement as if he had stayed in the Thorn Scheme.
 - The original paperwork did not mention the GMP.
 - Pearl had mismanaged the fund as it had not added bonuses to the Plan.
14. Phoenix Life did not uphold Mr E's complaint and in its response, it said that:-
 - The pre-retirement pack of 24 May 2018 was sent to all pension policyholders so it contained information that may not have been relevant to the Plan.
 - The Plan had already been reviewed in 1998 as part of the review.
 - Mr E had chosen to accept its offer to increase the value of Plan to match the value of the scheme deferred benefit he would have had if he had remained in the Thorn Scheme.
 - It had never guaranteed that the benefits available at retirement would match those that the Thorn Scheme would have provided.
 - Mr E could have taken advice from an Independent Financial Adviser.

- It was not required to re-visit cases where a pension review had already been completed and accepted by the customer.
 - Mr E's policy schedule confirmed his Plan benefits, including a GMP payable at State Pension Age of £5,574.36. A copy was enclosed.
 - It had been sending Mr E annual benefit statements that confirmed his policy included a GMP and that if the cost of providing the GMP at state pension age is more than the value of his policy then no tax free lump sum could be paid.
 - The premiums paid to the Plan were pooled with those of other policyholders and invested in the With Profits Fund. All policyholders of the Plan shared in the profits and losses.
 - When the Plan was taken out, assumptions were made about future investment returns and the quotations at that time gave examples of fund values and rates of returns.
15. Following a request from us to Phoenix Life. We were provided: with the Plan terms and conditions; policy schedule; the pension review documents; and the fact sheet about the performance of Mr E's pension.

Adjudicator's Opinion

16. Mr E's complaint was considered by one of our Adjudicators who concluded that no further action was required by Phoenix Life. The Adjudicator's findings are summarised below:-
- Mr E has complained that the pre-retirement pack from Phoenix Life in May 2018, contained information that was not relevant to the Plan. The purpose of the pack was to inform Mr E of his retirement options and it explained that not all the options would be available to him.
 - Mr E had made the decision to transfer his benefits from the Thorn Scheme to the Plan.
 - It was made clear in the policy documents and annual statements that the Plan included a GMP.
 - The offer in March 1998 from Pearl was to match the value of the Thorn Scheme deferred benefits and it was not said that the retirement benefits would be matched.
 - Mr E was provided with sufficient information in March 1998 following the pension review to make an informed decision about whether to accept Pearl's offer to increase the value of the Plan or to be reinstated in the Thorn Scheme. The onus was on Mr E to seek clarification of any conditions he was unsure of.

17. Mr E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr E provided his further comments which do not change the outcome.
18. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr E for completeness.
19. Mr E made the following comments in response to the opinion:-
 - He was disappointed with the stance taken by the Adjudicator's interpretation of the option he had selected and the suggestion that he should have taken further advice on the matter.
 - He had accepted Pearl's offer to match the value of his deferred benefits in the Thorn Scheme. He had understood his benefits in the Thorn Scheme to be "a pension payable from age 65 - estimated at £13352.35 pa - TOGETHER with attaching provisions for your dependants as set out overleaf."

Ombudsman's decision

20. I note that Mr E raised a similar issue in December 2004 when he complained that the return stated on the Plan quotation was not going to equal the figure stated on the Thorn Pension statement. Arguably the matter falls outside my jurisdiction on grounds of time but have accepted Mr E's later complaint that Phoenix has not complied with the guarantee he was given in 1998 when he chose to accept Pearl's offer to increase the value of the Plan.
21. Mr E does not dispute that he accepted Pearl's offer to increase the value of the Plan. However, he believes that the value of the Plan should provide retirement benefits that match those he would have been entitled to in the Thorn Scheme.
22. The underlying premise of policies, such as the one taken out by Mr E, is that the transfer value from the occupational scheme would be invested and at retirement the total fund would be used to provide a pension. When Mr E took out the Plan, there was an expectation that the value would grow to provide both the GMP and additional benefits. The pension provided would, however, not be less than the GMP that the policyholder would have received from the transferring scheme.
23. I appreciate that Mr E had the expectation that he would receive benefits equivalent to those he might have received from the Thorn Scheme. However, I find that the information he was given when he initially transferred, and again when the value of his Plan was uplifted, should have been sufficient to have made him aware that this would only ever be possible if the value of the Policy grew sufficiently to cover the cost of providing the GMP plus further benefits. There was no guarantee given that the fund value of the Plan would be sufficient to match the Thorn Scheme's estimated retirement benefits.

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24. Therefore, I do not uphold Mr E's complaint.

Anthony Arter

Pensions Ombudsman
2 August 2019