

Ombudsman's Determination

Applicant	Mr S
Scheme	Phoenix Life Retirement Annuity Policies VF14124F and VF14674D
Respondents	Phoenix Life Limited (Phoenix)

Outcome

1. Mr S's complaint is upheld, and to put matters right Phoenix Life should pay him £1,000, including £500 for his distress and inconvenience.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr S's complaint against Phoenix, the scheme administrator, is that it unreasonably delayed a transfer of his funds to another provider.

Background information, including submissions from the parties

4. Mr S had two retirement annuity policies, VF14124F and VF14674D, with London Life. That company was later taken over by AMP and subsequently by Phoenix. Both policies were then invested in Phoenix's With-Profits Fund.
5. On 1 March 2013, Mr S asked Phoenix to calculate the transfer value of his policies. On 7 March 2013, Phoenix quoted transfer values totalling £54,527.01.
6. On 10 May 2013 Mr S authorised Phoenix to pay his transfer values to the trustees of the Brooklee Pension Scheme, a small self-administered scheme (**SSAS**).
7. On 4 June 2013 the SSAS trustees completed Phoenix's transfer questionnaire and declaration form, authorising HMRC to confirm to Phoenix its registered pension scheme status. Day Cooper Day LLP (**DCD**), the administrator of the SSAS, sent the completed forms to Phoenix. At that date Mr S's transfer values totalled £54,838.00.
8. On 24 June 2013 Phoenix told HMRC's Anti Fraud Unit that it was concerned that DCD might be engaged in pensions liberation activity, and Phoenix asked HMRC to confirm that the SSAS was a registered pension scheme for the purposes of the

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Finance Act 2004. Phoenix explained to Mr S and DCD why it had approached HMRC.

9. On 9 July 2013 DCD confirmed to Phoenix that the SSAS was a registered pension scheme, and said:

“There is therefore no reason for a delay in completing this transfer. Mr [S] is 67 years of age and wishes to commence drawing his retirement benefits. It is unacceptable to delay this matter further and we insist that this case is now dealt with as a priority.”
10. On 15 July 2013, HMRC told Phoenix that it was in the process of making the checks necessary to answer its query.
11. On 23 July 2013, Phoenix told DCD that it was making enquiries of HMRC about the SSAS. It also said:

“...this application could also require separate enquiries to be made. As a result, it is difficult for us to put a timescale on when we will be able to release transfer funds, or whether we will be able to release them at all.”
12. On 31 July 2013 Mr S made a formal complaint to Phoenix about the delay, saying he wished to commence drawing his pension benefits.
13. On 1 August 2013, DCD complained to Phoenix that it had not contacted the SSAS trustees or administrator for further information. DCD enclosed an information sheet about DCD and the schemes it administered.
14. On 23 August 2013, DCD complained to Phoenix about the delays. DCD explained that the transfer had been requested because Mr S did not want to buy an annuity, the only option that Phoenix offered at that time; the pension fund formed a small part of Mr S's overall wealth, which was why he had not accessed it at his normal retirement age. DCD confirmed that the scheme was a registered pension scheme.
15. On 24 August 2013, Phoenix told Mr S that it was waiting for HMRC's approval certificate.
16. On 24 September 2013, DCD told Phoenix that HMRC would not provide Phoenix with confirmation of registration because HMRC expected the SSAS administrator to access the registration certificate online and provide this information to the transferring scheme when so requested. Therefore Phoenix was blocking a legal right to transfer.
17. On 1 October 2013, HMRC told Phoenix that it was in the process of making necessary checks.
18. On 21 October 2013 HMRC told Phoenix that it had changed the process for responding to information requests, and that Phoenix's request was being considered under the new process.

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19. Mr S contacted the Pensions Advisory Service (**TPAS**) in 2014. TPAS told Phoenix on 3 February 2014 that the ongoing delay was intolerable and that Phoenix should act urgently to transfer the greater of the current policy values and those as at the end of June 2013 plus interest, together with a modest amount for Mr S's distress and inconvenience.
20. HMRC apologised to Phoenix for the delay on 14 February 2014, saying that it was currently reviewing the SSAS and should be able to provide a full response at the end of March 2014.
21. On 24 February 2014 TPAS complained to Phoenix that Phoenix had already received a copy of the HMRC letter confirming the SSAS registration.
22. On 5 March 2014, HMRC sent Phoenix a letter to confirm that the SSAS was a registered scheme, not subject to a de-registration notice, and HMRC had no evidence that the SSAS was being used for pensions liberation purposes.
23. However, Phoenix reiterated to TPAS on 10 March 2014 that it was still awaiting the HMRC confirmation.
24. On 12 March 2014, DCD said that HMRC had written to Phoenix on 5 March 2014 to confirm SSAS registration.
25. On 28 March 2014 Phoenix told Mr S that although registration confirmation had been received from HMRC, Phoenix would not review its position to suspend the transfer request until a code of good practice had been issued by the Pension Liberation Industry Group (**PLIG**). Phoenix apologised for having implied in its earlier correspondence that the transfer would be approved when it received HMRC registration confirmation.
26. Mr S told Phoenix on 3 April 2014 that the position it was taking was causing him much stress.
27. In December 2014, Phoenix contacted the SSAS to ask for information about its sponsoring employer.
28. PLIG issued its code of good practice, "Combating Pension Scams", on 16 March 2015.
29. In April 2015, Phoenix made transfer payments totalling £55,772.79 in respect of Mr S to the SSAS.
30. When Mr S contacted us, he said that a transfer to the SSAS from another of his pension arrangements had been made without similar delays arising; he said that Phoenix's fund return was under 1% p.a. so its delay caused him financial loss as the other funds he had invested in the SSAS had returned 4.8% over the 15 months since January 2014; during the delays Phoenix's management charges had continued to be payable, and the delays prevented him taking a useful tax-free cash sum much earlier.

Adjudicator's Opinion

31. Mr S's complaint was considered by one of our Adjudicators who concluded that further action was required by Phoenix Life. The Adjudicator's findings are summarised briefly below:

- Mr S had a statutory right to a transfer payment. His transfer request was made in June 2013, but Phoenix did not make the transfer to the SSAS until April 2015. Therefore the transfer process took nearly two years, although Mr S had done all that he needed to do to effect the transfer. That delay was unreasonable.
- However, Phoenix was not responsible for all of the delays that occurred. Because of justifiable concerns in the pensions industry about pensions liberation scams, it would not have been safe for Phoenix to make the transfer payment until it had received written confirmation from HMRC that the SSAS was a registered pension scheme and that, in addition, HMRC had no suspicions that the SSAS was being used for pensions liberation purposes. It would not have been sufficient for Phoenix to rely on information provided second hand by DCD.
- Unfortunately, it was not until March 2014 that HMRC sent Phoenix the necessary confirmation. It was unclear whether that confirmation would have been available from HMRC more quickly if Phoenix had made attempts to chase HMRC for its response: part of the delay arose because HMRC changed its process for responding to information requests.
- So, Phoenix could have made the transfer shortly after receiving HMRC's letter in March 2014. However, there was a further delay of 13 months to April 2015. This was caused mainly by Phoenix.
- Firstly, although Phoenix had given Mr S the impression in 2013 that HMRC confirmation was the only stumbling block to be surmounted, Phoenix decided in 2014 that it would not take any further action until the PLIG code of good practice had been issued.
- Although it was helpful, the code did not have the force of law. Phoenix had a discretion whether or not to proceed with Mr S's transfer before the code was issued. Bearing in mind that Mr S was already aged 67, and had made his transfer request in 2013, and DCD had provided a good explanation at that time of why Mr S wanted to make the transfer, Phoenix should have exercised its discretion to make Mr S's transfer payment in April 2014, not one year later.
- Secondly, as Phoenix knew the identity of the receiving scheme in June 2013 it could have communicated directly with the SSAS later that year. However, Phoenix failed to do so until much later, in December 2014. This also wasted time.
- The question then arose whether a transfer made in April 2014 instead of April 2015 would have been to Mr S's financial advantage. There was no guarantee that Mr S would have profited from an earlier transfer. The investment return of the SSAS

would change from time to time and would depend on the dates of investment, the investment funds chosen and the valuation date. However, Mr S said that the SSAS's annual investment return in 2014 was over 4%, compared with Phoenix's investment return of under 1%. His transfer value increased from £54,527.01 to £55,772.79 between March 2013 and April 2015. Because of Phoenix's low rate of return, it was more likely than not that an earlier transfer would have been financially advantageous for Mr S, so therefore Mr S should receive some compensation from Phoenix in recognition of his lost investment opportunity. In the circumstances Phoenix should pay Mr S £500 for this.

- In correspondence in 2013, Phoenix implied several times that confirmation of the SSAS's pension scheme registration would be the only pre-condition to be satisfied before Mr S's transfer could be made. Therefore it would have been very frustrating for Mr S to learn in 2014 that Phoenix had decided to impose more pre-conditions, particularly as there was no legal obstacle to it making the transfer then. Phoenix should also pay compensation of £500 to Mr S for the distress and inconvenience that he had clearly been caused.
 - Mr S's complaint should be upheld, and to put matters right Phoenix should pay Mr S the sum of £1,000.
32. Mr S has accepted the Opinion. Phoenix has confirmed that it received the Opinion, but has failed to say whether or not it accepts the Opinion, despite being given several weeks to respond. The complaint was therefore passed to me for determination.

Ombudsman's decision

33. I agree with the Adjudicator's Opinion, summarised above.
34. Phoenix's failure to make the transfer no later than April 2014 amounts to maladministration, for which Mr S should be compensated. I consider that the sum of £500 is a reasonable amount to reflect Mr S's loss of investment opportunity.
35. In addition, the delays caused by Phoenix were very frustrating for Mr S and I consider that an additional sum of £500 should be paid to him for his serious distress and inconvenience.
36. Therefore, I uphold Mr S's complaint.

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Directions

37. Within 28 days of the date of this determination Phoenix shall pay Mr S £1,000.

Karen Johnston

Deputy Pensions Ombudsman
31 January 2017