

Ombudsman's Determination

Applicant	Mr T
Scheme	James Hay SIPP (the SIPP)
Respondents	James Hay Partnership (James Hay) Phoenix Life Limited (Phoenix Life)

Outcome

1. Mr T's complaint against James Hay and Phoenix Life is partly upheld, but there is a part of the complaint I do not agree with. To put matters right, for the part that is upheld, Phoenix Life shall pay into Mr T's new pension arrangement redress in respect of any loss incurred by its actions. Phoenix Life shall also pay £500 to Mr T in respect of the significant distress and inconvenience he has suffered.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr T has complained that James Hay made an unauthorised encashment of his policy, formerly held within the SIPP and that Phoenix Life failed to honour the terms of the original policy.

Background information, including submissions from the parties

4. On 30 August 2000, Mr T signed a NPI (now Phoenix Life) application form for a Flexible Income Plan, to be held within the SIPP. The trustee was listed as James Hay Pension Trustees (**the Trustee**). Mr T was erroneously listed as a trustee, but this was crossed out, and his details were instead listed as the Beneficiary. The term selected on the application form was 15 years. Mr T transferred around £123,000 to the SIPP and invested 100% of this in the Global Care fund.
5. On 2 June 2015, Phoenix Life wrote to the Trustee to confirm that the policy within the Scheme was to mature on 4 July 2015. It said:

“Please find enclosed our maturity discharge form. Could I kindly ask that this form is fully completed, signed by all trustees and returned to us so that the claim can be processed on the maturity date.”

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6. On 7 June 2015, Mr T wrote to James Hay, with some questions about the administration of the fund. In this letter he reminded James Hay that the 15-year term end was approaching, when he understood he would have free access to move to other James Hay funds.
7. On 10 June 2015, James Hay wrote to Mr T to confirm that the holding had been surrendered.
8. On 3 July 2015, £216,365.99 was disinvested. Mr T has confirmed that he transferred the amount to another SIPP provider, which completed on 14 August 2015. Mr T has said that he placed orders for new investments on this same date, and that he reinvested proportionately into five funds, which were purchased between 19 and 21 August 2018.
9. Mr T's complaint is that the maturity was not necessary and that it should not have been allowed without his consent. He holds both Phoenix Life and James Hay responsible for the automatic disinvestment.

Adjudicator's Opinion

10. Mr T's complaint was considered by one of our Adjudicators who concluded that no further action was required by James Hay but that Phoenix Life should reimburse Mr T's new pension arrangement in respect of any loss incurred because of its actions and pay £500 to Mr T in recognition of the significant distress and inconvenience it had caused him. The Adjudicator's findings are summarised briefly below: -
 - The original Phoenix Life terms and conditions do not state that disinvestment was an automatic requirement upon the maturity date.
 - Given James Hay's role as the Trustee, it was reasonable for it to follow the instructions issued by Phoenix Life on 2 June 2015.
 - As the disinvestment was invoked by Phoenix Life, it bears the liability for any financial loss.
11. Mr T did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr T provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr T for completeness. Mr T's comments are summarised below: -
 - Mr T believed he was a co-trustee as he had originally been listed as such on the application form.
 - Mr T maintains that James Hay is at fault.
 - The redress should consider the bid/offer spread on the Phoenix Life Global Care fund.

Ombudsman's decision

12. Mr T has said that he thought he was a trustee of the SIPP. However, it is not possible for a SIPP member to be a trustee. I recognise that the form erroneously listed him as such, but this was corrected. In any event, this initial error has not impacted Mr T or the management of the SIPP in any way.
13. Further, in this case, it was the role of the Trustee to respond to Phoenix Life's instructions. In this case James Hay simply provided the necessary bank account details for transferring the disinvested funds. The disinvestment was instigated by Phoenix Life. I do not consider James Hay responsible.
14. Phoenix Life has accepted that it made an error in instructing James Hay to disinvest the fund. It recognises that its terms did not in fact require the automatic disinvestment. It will perform a loss calculation for the period during which the funds were disinvested and award redress if a financial loss is found. The directions below will put Mr D back into the position in which he would have been in, had his funds not been disinvested.
15. I consider that this action caused Mr T significant distress and inconvenience so Phoenix Life should also make an award for non-financial injustice.
16. Therefore, although I do not uphold the complaint in respect of James Hay, I do uphold Mr T's complaint against Phoenix Life.

Directions

17. Within 21 days of the date of this Determination: -
 - (i) Phoenix Life will ascertain the notional value of the disinvested sum, had it been invested in the new scheme, as at the date of disinvestment, which I understand to be 3 July 2015.
 - (ii) Phoenix Life will calculate this notional value based on the actual funds Mr T went on to invest in. This calculation will be made on Mr T giving Phoenix Life authority to contact his new provider in order to obtain this information.
 - (iii) The notional value shall then be compared to the actual amount transferred and, if there is a loss, this amount shall be paid into Mr D's new scheme.
 - (iv) Interest shall be applied to the redress amount, at the rate quoted by reference banks, from the date of reinvestment with the new scheme, to the date of settlement.

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- (v) Phoenix Life shall pay £500 directly to Mr T in respect of the significant distress and inconvenience he has suffered.

Anthony Arter

Pensions Ombudsman
19 July 2018