

## Ombudsman's Determination

Applicant	Mr N
Scheme	Phoenix Life Personal Pension Plan ( <b>the Plan</b> )
Respondent	Phoenix Life ( <b>Phoenix</b> )

## Outcome

1. I do not uphold Mr N'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 N has complained that Phoenix provided him with misinformation regarding his pension entitlement from the Plan.

## Background information, including submissions from the parties

4. The Plan was inceptioned on 5 April 1993, with a policy number of EF133326 and a normal retirement age of 50.
5. However, in August 2000, when he reached this age, Mr N notified Phoenix that he wanted to defer receiving his Plan benefits and continue making monthly contributions. Phoenix set up policy number EF151891 in order to record the units purchased by the contributions Mr N paid into the Plan during the deferment period. Mr N stopped making these contributions in 2008.
6. When Phoenix migrated its pension schemes to a new system in April 2012, it added the units purchased under EF151891 to EF133326. EF151891 should have been deleted, but this was not done. Phoenix continued to issue Mr N with annual valuations for EF133326, which showed his complete, correct, benefit entitlement. However, Phoenix also erroneously sent Mr N annual valuations for EF151891, showing the units purchased during the period of deferment, which had now been added to EF133326.
7. In June 2015, when he was approaching the age of 65, Mr N instructed Phoenix to send him a retirement pack for each policy. Phoenix provided a quotation for EF133326, showing a lump sum of £27,901.83. Phoenix also issued a quotation for

EF151891, which specified a lump sum of £7,974.45. Mindful of a dip in stock markets at this time, Mr N opted to defer taking his Plan benefits.

8. Mr N took the decision to retire in 2016, resigning from his job in May 2016. His last working day was 27 May 2016.
9. Mr N requested a retirement pack from Phoenix in July 2016. Phoenix provided Mr N with a quotation for EF133326, indicating a lump sum of £28,038.68, but did not send him a quotation for EF151891.
10. Mr N telephoned Phoenix on 21 July 2016 to follow up his request for a quotation for EF151891. Phoenix established that, following the migration to the new system, it had continued to issue statements for EF151891 erroneously. As a result, Mr N had been led to believe that his pension entitlement from the Plan was higher than was actually the case. Mr N was dissatisfied and submitted a complaint to Phoenix.
11. Phoenix responded on 29 September 2016, acknowledging its maladministration and offering Mr N compensation of £350 for the distress and inconvenience caused.
12. Remaining unhappy, Mr N referred the complaint to us.

### **Adjudicator's Opinion**

13. Mr N'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 briefly below:-
  - Mr N resigned from his job before he requested the retirement pack from Phoenix and, as such, his decision to retire was not based on the incorrect information issued by Phoenix.
  - The quotation, which Phoenix erroneously sent to Mr N in respect of EF151891 on 29 June 2015, was accompanied by a letter that said the value of the benefits were not guaranteed. Accordingly, Mr N should reasonably have been aware that the quotation did not establish a legal right to the benefits referred to in the statement.
  - Mr N also had a Civil Service pension, providing a lump sum of £28,767.48 and an annual pension of £4,315.14. As a result, the Adjudicator concluded that the erroneous quotation for EF151891 constituted a small part of Mr N's overall pension benefits and he would still have purchased the holiday if the maladministration had not occurred.
  - Taking all of the above into consideration, the Adjudicator determined that there was insufficient evidence that Phoenix's maladministration caused Mr N to suffer financial loss.

- The Adjudicator noted that Phoenix had offered Mr N £350 for the distress and inconvenience caused by its maladministration and did not consider an Ombudsman would award anything further.
14. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr N for completeness. In summary, these are:-
- As a result of Phoenix's maladministration, incorrect quotations were sent to him over several years and as such, it was reasonable for him to have relied on them when planning his retirement.
  - While accepting that the quotation for EF151891 was for a sum too small to have affected his decision as to when to retire, this point is irrelevant, as he had not suggested otherwise.
  - The warnings contained in the letters enclosed with Phoenix's quotations were intended to point out that the value of the fund can go up or down; they were not meant to signify that a fund may not actually exist, as suggested by the Adjudicator.
  - Although he did not ask Phoenix to provide an updated quotation before he purchased the holiday, by July 2016 the stock market had been rising for a substantial period and as such, any fluctuation could reasonably be expected to increase the value of the fund.
  - The compensation offer of £350 made by Phoenix is insufficient, given the considerable concern, disappointment and anxiety caused to him by its maladministration.

### **Ombudsman's decision**

15. I recognise that Phoenix provided Mr N with incorrect information as to his total pension entitlement from the Plan and appreciate that this constitutes maladministration. But that is not, in itself, sufficient to establish that Mr N should receive benefits to which he is not contractually entitled. To arrive at such a conclusion, I would have to be satisfied that, on the balance of probabilities, Mr N suffered financial loss as a consequence of Phoenix's maladministration.
16. In order to determine whether this is the case, I have considered whether there is persuasive evidence that Mr N would have acted differently if there had been no maladministration by Phoenix. I note that he acknowledges that the fund value erroneously quoted in respect of EF151891 was too small to have impacted on the timing of his decision to retire. In view of this, I conclude that, on the balance of probabilities, Mr N would still have retired in May 2016 if he had known his actual pension entitlement at that point.

17. Mr N acknowledges that he purchased the holiday before he asked Phoenix for final quotations. Furthermore, he says that the decision to take the holiday was based on his overall financial planning, of which the erroneous quotations issued in respect of EF151891 after 2012 formed but one part. I can see, from Mr N's submissions, that he also had a Civil Service pension, providing a lump sum of £28,767.48 and an annual pension of £4,315.14. I also note that he received the lump sum and the first instalment of the annual pension under this scheme on 21 June 2016, shortly before he paid for the holiday on 3 July 2016.
18. Taking all of the evidence into account, I am not persuaded that Mr N purchased the holiday in reliance on the erroneous quotations which Phoenix issued in respect of EF151891. On the balance of probabilities, I consider Mr N would still have bought the holiday in July 2016 if these quotations had not been issued and had he known his correct pension entitlement at that point. Accordingly, I conclude that there is insufficient evidence that Mr N suffered actual financial loss due to Phoenix's maladministration. The evidence points to loss of expectation only.
19. I accept that the warnings contained in the letters enclosed with Phoenix's quotations are intended to indicate that the fund values can go up or down and do not signify that a fund may not actually exist. However, this fact does not alter the outcome of the complaint. The information before me establishes that, on the balance of probabilities, Mr N has not been prejudiced by Phoenix's maladministration. As a result, I conclude that he is not entitled to receive the monies erroneously quoted under EF151891 between 2012 and 2015.
20. I do not doubt that the loss of expectation caused Mr N distress and inconvenience. However, unless there is evidence that the distress and inconvenience was significant I would not make an award. In my judgment, the papers before me do not establish that this was the case, and so I conclude that the £350 offered by Phoenix is sufficient.
21. Therefore, I do not uphold Mr N's complaint.

**Anthony Arter**

Pensions Ombudsman  
8 February 2017