

## Ombudsman's Determination

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| Applicant  | Mr R   |
| Scheme     | Phoenix Life Pension Plan ( <b>the Plan</b> ) Policy Numbers 813351 & 813352 |
| Respondent | Phoenix Life Limited ( <b>Phoenix</b> )                                      |

### Outcome

1. I do not uphold Mr R'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 R complains that as a consequence of delays on the part of Phoenix in transferring the pension benefits available to Mrs R, his late wife, from the Tally Limited Pension Scheme (**the Scheme**) to another pension arrangement:
  - a) he lost the opportunity to receive the transfer value available to Mrs R from the Scheme entirely as a lump sum death benefit; and
  - b) he is now entitled to a Plan annuity secured with Phoenix of around £450 pa representing the widower's pension available to him from the Scheme which has been wound up
4. Although Phoenix paid him a goodwill compensation award of £13,729 representing the difference between Mrs R's transfer value figure calculated as at 3 March 2016 and the cost of securing his widower's pension in the Plan, Mr R does not consider this payment adequately compensates him for his loss.

### Background information, including submissions from the parties

5. In October 2015, Mrs R decided to transfer her pension rights in the Scheme and also the NHS Pension Scheme to another pension arrangement. Mr R was also considering a transfer of his pension rights from three schemes around this time.
6. They sought the assistance of an Independent Financial Adviser (**IFA**) with the transfers and provided him with their letters of authority so that he could obtain current transfer information for all five pension schemes.

7. The IFA sent Mrs R's original letter of authority dated 17 October 2015 to Phoenix via JLT, the administrators of the Scheme.
8. On 9 November 2015, Mr R sought an update on all the transfers from the IFA.
9. Mr R says that:
  - the IFA informed him on the next day that he was actively chasing responses to all the transfer requests; and
  - as Mrs R's health deteriorated significantly in late November/December, he could not deal with pension matters again until the end of January 2016 after Mrs R had encouraged him to do so
10. On 10 February 2016, the IFA informed Mr R that Phoenix had not accepted Mrs R's letter of authority and required a new one to be completed.
11. In her letter dated 11 February 2016 to JLT, Mrs R said that:
  - Mr R had telephoned JLT earlier that day to inform it what had happened to the letter of authority;
  - having been diagnosed with cancer, she was expected to live only for another year or so; and
  - she therefore asked that JLT dealt with her transfer request without delay
12. On 12 February 2016, Mrs R sent a new letter of authority to the IFA for onward transmission to Phoenix via JLT.
13. On 14 February 2016, Mr R says that he spoke to a representative of the Scheme Trustees who subsequently asked Phoenix to provide the requested information as soon as possible.
14. The IFA received Mrs R's new letter of authority on 16 February 2016 and sent it to JLT. The IFA says that he reminded both JLT and Phoenix to supply the information urgently during the next few days.
15. Neither Mr R nor the IFA have been able to provide any evidence to corroborate their statements as detailed in paragraphs 13 and 14 though.
16. Phoenix says that JLT did not receive this letter of authority until 23 February 2016. On the same day, Phoenix sent a letter to the IFA to inform him that it had to refer Mrs R's request to its technical department in order to find the scheme details.
17. After receiving this letter, the IFA emphasised to Phoenix the urgency of the matter and received a statement of Mrs R's estimated retirement benefits on 25 February 2016.
18. On 3 March 2016, Phoenix sent the requested transfer details to the IFA but Mrs R passed away on 4 March 2016 before completing the transfer.

19. Phoenix says that:

- it could arguably have dealt with Mrs R's transfer request better by accepting the copy of her original letter of authority received in February 2016 instead of requesting a new one to be completed;
- it could then have sent the requested transfer information earlier to the IFA but this did not guarantee that Mrs R's transfer would have been completed during the short period of time remaining before her death;
- it paid Mr R a goodwill compensation award of £13,729 comprising of Mrs R's transfer value as at 3 March 2016 less the cost of providing his widower's pension in the Plan which included a Guaranteed Minimum Pension (**GMP**);
- it cannot increase its award to Mr R because it is obliged to pay his GMP;
- Mr R may still claim his backdated widower's pension from the Plan;
- it is not clear from the available evidence whether the IFA sent Mrs R's original letter of authority to it (via JLT) in November 2015 or that the IFA subsequently chased Phoenix about this letter;
- furthermore, it only provided its contact details in February 2016 after it had secured the Scheme's benefits following wind up; and
- prior to this date, Scheme members had been asked to contact the Scheme Trustees if they had any enquiries about their benefits

20. Mr R says that:

"My IFA sent off five requests to five different providers, four of them responded...Phoenix/JLT...never responded in a timely manner...if details were sent to five and four responded the odds are the IFA did what he was asked to do and Phoenix/JLT let my late wife down by not dealing with the matter in again a timely manner.

I have also never requested or expected to be put in a better position...By claiming the pension at a rate of approx. £450 pa if I live to be over 100 years old it might just get back the £16K-£20K pot.

While I accept that the monies paid in terms of goodwill were gratefully received I believe this was Phoenix's admission in conjunction with JLT/Tally administrators that they hadn't got it right. Had we had the opportunity and that was something Phoenix/JLT/Tally administrators took away from us and has not allowed me to invest the money for our three children and grandchild.

These were my late wife's final wishes...

Please note that I am still happy to accept the single payment and waive my rights to the (widower's) pension."

## Adjudicator's Opinion

21. Mr R'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:

- The IFA said that he had sent Mrs R's original letter of authority to Phoenix via JLT in October 2015. Phoenix, however, said that it did not receive this letter until the IFA provided it with a copy in February 2016. The IFA contended that after Mr R had sought an update on the transfer in November 2015, he had chased Phoenix for the transfer details. There was no concrete evidence that he did this though. The letter of authority, more likely than not, had unfortunately been mislaid during transit to Phoenix (via JLT) in the postal system and Phoenix consequently only first became aware of its existence in February 2016.
- Phoenix should have accepted the copy of Mrs R's original letter of authority. It was unnecessary to ask for a new letter of authority which clearly delayed the transfer process and constituted maladministration on the part of Phoenix.
- But even if Phoenix had sent to the IFA the transfer information without requiring a new letter of authority from Mrs R, it was unlikely that there was still enough time left to complete the transfer process before she passed away suddenly on 3 March 2016. Both Phoenix and the receiving scheme would need all their requirements to be fully met before allowing the transfer to proceed. This would have taken time which in Mrs R's case was sadly unavailable.
- Both Mr R and the IFA said that they tried to expedite the transfer process once Mrs R had sent the new letter of authority to Phoenix (via JLT) but there was no concrete evidence to corroborate their statements.
- Although there was no basis upon which to conclude that Mr R has suffered any actual financial loss, it was clear that Mr R has suffered significant distress and inconvenience as a result of the maladministration identified. In recognition of this, Phoenix had paid him £13,729 which was very generous and entirely reasonable in the circumstances.
- Mr R would like Phoenix to increase its compensation payment to the full transfer value available to Mrs R from of the Scheme. But if Phoenix had agreed, then this would effectively put Mr R in a better position than he would have been in had the maladministration not occurred. He would then receive both his widower's pension in the Plan and also the cost of securing it by annuity purchase with Phoenix which would not be an equitable remedy.

22. Mr R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr R 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 R for completeness.

**Ombudsman's decision**

23. Whilst I fully appreciate Mr R's points of view on this matter, Phoenix and the receiving scheme were entitled not to permit a transfer of Mrs R's pension rights from the Scheme until their requirements were fully met. Regrettably Mrs R was unable to do this before she sadly passed away on 4 March 2016.
24. I concur with the Adjudicator that the evidence available falls short of establishing that the transfer could have been completed prior to Mrs R's death.
25. In accordance with the agreement made with the Scheme Trustees, Phoenix therefore had to use the transfer value available to Mrs R to secure a widower's pension for Mr R in the Plan by annuity purchase. It is therefore not in a position now to grant his request to pay that part of Mrs R's transfer value not required to secure his widower's pension as an additional lump sum.
26. Although I fully sympathise with Mr R's circumstances, I do not therefore uphold his complaint.

**Karen Johnston**

Deputy Pensions Ombudsman  
22 March 2018