

Ombudsman's Determination

Applicant	Mr H
Scheme	The Who Group Pension Scheme (the Scheme)
Respondent	Phoenix Life Limited (Phoenix Life)

Outcome

1. I do not uphold Mr H's complaint and no further action is required by Phoenix Life.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr H has complained about the non-payment of his pension benefits. After using the Pensions Tracing Service, Mr H was advised that Phoenix Life was the "last insurer" of the Scheme. As such, he believes Phoenix Life may have the responsibility of paying his benefits.

Background information, including submissions from the parties

4. Mr H began employment for The Who Group in 1976, and joined the Scheme shortly after. At this point, the Scheme's administrator was a company called Crown Life Pensions Limited (**Crown**). However, in June 1992, the Crown Group Pension Portfolio was acquired by Century Life Plc, which then rebranded to Phoenix Life in 2006.
5. According to Phoenix Life, in October 1983, the Scheme "discontinued" whilst it was being administered by Crown. Additionally, by April 1990, all the funds had left the Scheme as a bulk transfer had taken place, but nothing confirmed whether Mr N's funds were included in this, or where this bulk transfer went.
6. In February 1999, when the Scheme was administered by Century Life, it subsequently wound up.
7. On 26 May 2017, following a discussion with a friend and ex-colleague, Mr H contacted the Pensions Tracing Service (**PTS**) as he had come to realise that he was not in receipt of his pension benefits from the Scheme. Based on the information Mr H had provided, the PTS advised that the Scheme had wound up in 1999. It also

stated that Century Life, now known as Phoenix Life was the “last insurer” of the Scheme. As a result, Mr H contacted Phoenix Life.

8. On 11 July 2017, Phoenix Life responded to Mr H’s enquiry about the Scheme. It informed Mr H that the Scheme had “discontinued” and then wound up, but that it held one record for him. It stated that an Accrued Rights Premium (**ARP**) of £793.82 was paid to the National Insurance Contributions Office (**NICO**) on 22 November 1989, to reinstate Mr H’s period of contracted out service into the State Earnings Related Pension Scheme (**SERPS**). It went on to say that due to the number of years since the Scheme was wound up, it did not hold any paper files and so could not confirm any further information other than details of the Scheme Trustees from 1999.
9. On 10 October 2017, Mr H complained to Phoenix Life about non-payment of his pension benefits. He explained that he had reconnected with a friend who joined the Scheme at the same time as him. The friend had stated that he was receiving benefits that he had accrued in the Scheme, from a third-party insurer. As a result, Mr H had spent about six months trying to locate his pension benefits but with no success. Therefore, he was relying on what the PTS had informed him.
10. On 20 November 2017, Phoenix Life responded to Mr H’s complaint. It repeated much of the contents of its 11 July 2017 letter, but reiterated that as an administrator, any correspondence would have been sent to the Scheme Trustees who were responsible for contacting the Scheme members. It stated that it had conducted a thorough search, but was unable to find any further information. Phoenix Life explained that it was not unusual for records to be destroyed following regulatory guidelines on retention policies. As such, it did not uphold Mr H’s complaint.
11. On 30 November 2017, Mr H complained to this Office. He outlined how, based on the information Phoenix Life had provided about the ARP, he had contacted the Department for Work and Pensions’ Pensions & Overseas Benefits Directorate to see whether this had been done. Mr H stated that he had been told that this money had not been paid to NICO, and that this type of transfer could not be done. Nonetheless, Mr H believed that given he was told an ARP was paid to NICO, this was proof that he was a member of the Scheme. Mr H also thought that Phoenix Life should have records and explained that he wanted a resolution.
12. Whilst this Office has been considering Mr H’s complaint, Phoenix Life has provided a document which evidenced that an ARP relating to Mr H’s service had been paid on 22 November 1989, and that a bulk transfer took place on 9 April 1990. However, the document did not specify the members involved in this transfer. Nevertheless, the document also showed that ARPs had been paid for a number of other members in 1986, and that whilst there had been a bulk transfer in 1990, other individual transfers had also taken place in 1988, 1990 and 1991.
13. In addition to this, whilst enquiries to the former Trustees did not provide any further information, this Office’s enquiry to HM Revenue & Customs (**HMRC**) was responded to with confirmation about the ARP. HMRC confirmed that a State Scheme Premium,

which is a payment made to HMRC to reinstate all or part of an individual's SERPS benefits, of £793.82 was recorded for Mr H, and paid by the Scheme. HMRC explained that this was for the period of 29 May 1978 to 31 January 1981, and was received by HMRC on 31 October 1983. It explained that this was a result of the winding up of the Scheme, and so The Who Group would have requested for this action to take place on Mr H's record to reinstate him into SERPS. HMRC also stated that it could not comment on the response from the Pensions & Overseas Benefits Directorate, other than to say that the Directorate would not have that much knowledge in respect of the process for reinstating a formerly contracted-out member into SERPS.

Adjudicator's Opinion

14. Mr H'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 briefly below:-

- Based on the information available, it was likely that members were given options in relation to their benefits as individual transfers were listed. However, this has made locating Mr H's benefits difficult. Given that pension schemes during the 1980s were not always willing to accept liability for paying the guaranteed minimum pension liability, as a result of Mr H contracting-out of SERPS, this could explain why a large number of ARPs were paid to reinstate members into SERPS.
- On the balance of probability, Mr H transferred his pension benefits to another provider when the Scheme was discontinued, which is why the ARP payment was made. As a result, Phoenix Life has made no error and in any case, the responsibility of ensuring members receive their benefits would fall on either the Trustees of the Scheme, or the receiving scheme the benefits were transferred to.
- With regard to the limited records Phoenix Life held for Mr H, the Scheme wound up in 1999, so it is somewhat expected that there would be limited information.

15. Mr H did not accept the Adjudicator's Opinion and provided further information. The information and Mr H's comments are summarised below:-

- Phoenix Life were in breach of its responsibilities as Trustees. It is a requirement by law that all original pension scheme records should be held by the Trustees for the life of the Scheme, and 12 years after the Scheme closes.
- Mr H received a letter from the Department for Work & Pensions (**DWP**) dated 23 July 2009, which outlined his State Pension. This stated that Mr H was in a private pension scheme from 6 April 1978 to 5 April 1997. However, he had no contracted out deductions.

- The letter of 23 July 2009 from DWP clarifies that Mr H was in the Scheme, but does not explain why Mr H is not in receipt of a pension or lump sum payment as per his entitlements under the Scheme.
 - Mr H worked for The Who Group from Summer 1976 and joined the Scheme shortly after. He left this employment in Spring 1981.
16. In response, the Adjudicator explained how this impacted their Opinion, but not inasmuch that it materially changed the outcome. This is summarised below:
- Due to the time that had passed, Phoenix Life destroyed Mr H's file as over seven years had passed from when the Scheme wound up. Whilst pension records have different regulations about retention, Phoenix Life was not the Trustee of the Scheme and so it would not have been its responsibility to retain records. Additionally, this prevents a conclusion of whether there was a lack of communication from Phoenix Life.
 - The letter from DWP confirms that Mr H was in a private pension from April 1978 to April 1997, but it did not confirm that Mr H was in the Scheme for the entirety of that time. The DWP will have records of people who have contracted out of SERPS and so would have a record of who has the GMP liability, if there is one. However, as Mr H contracted back into SERPS, DWP would no longer have a record of the GMP liability as this would cease to exist.
 - As Mr H was reinstated into SERPS, he would not have any contracted out deductions. This is demonstrated by the information provided by HMRC and the letter from DWP. Otherwise, Mr H would have had a reduced Additional State Pension.
 - Based on the information provided by Mr H, it is highly likely that he did not meet the deferment criteria set out by the Social Security Act 1973. This Act introduced the ability to preserve or defer pension benefits, but the member firstly needed to be aged 26 at the time they left the pension scheme, and secondly, with five years of qualifying pensionable service. As the information provided suggests that Mr H did not complete five years of employment before leaving the Scheme, he would not be entitled to defer or preserve his pension benefits. Therefore, whilst Mr H was a member of the Scheme, he did not have any entitlement.
17. Mr H did not accept the Adjudicator's Opinion the complaint was passed to me to consider. Mr H's further comments 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 H for completeness.

Ombudsman's decision

18. Phoenix Life is not the Trustee of the Scheme and so does not hold the same responsibilities, such as retention of the Scheme's records. As the Scheme wound up over a decade before Mr H contacted Phoenix Life, I do not consider Phoenix Life made an error by destroying the records that it had previously held. I say this as there would have been no benefits remaining in the Scheme and so it would be reasonable for an administrator such as Phoenix Life to destroy all paper records. I appreciate this may be disappointing for Mr H, but it is for the member to establish their entitlement in circumstances like these.
19. I appreciate Mr H has submitted information from the DWP that states that Mr H was in a private pension scheme from 1978 to 1997. Nevertheless, this does not confirm what the private pension scheme was, nor that Mr H has an entitlement in it. The DWP will generally have records of any GMP liability held by a Trustee, which is why it may be aware of Mr H's membership in a private pension scheme. However, as Mr H has no contracted out deductions from his ASP, this confirms that the ARP of £793.82 was paid to HMRC, and is consistent with HMRC's record that Mr H was reinstated into SERPS.
20. Based on the information that has been provided, I am satisfied that Mr H was a member of the Scheme, but I cannot conclude that Mr H therefore has an entitlement in the Scheme. The Social Security Act 1973 was introduced to allow members to defer their pension benefits, but the criteria at the time was that the member needed to have completed five years of qualifying pensionable service and had reached the age of 26. Mr H was over 26 years old when he left his employment with The Who Group in 1981. However, he left before he had completed five years of service. As a result, Mr H would not have been able to defer his pension benefits and was entitled only to a refund of contributions.
21. Without information that indicates that Mr H did have an entitlement with the Scheme, and that Phoenix Life should be responsible rather than the Trustees, I do not consider that Phoenix Life has made an error.
22. Therefore, I do not uphold Mr H's complaint.

Karen Johnston

Deputy Pensions Ombudsman
30 January 2019