

## Ombudsman's Determination

Applicant	Mr N
Scheme	Phoenix Life Policy ( <b>the Policy</b> )
Respondent	Phoenix Life

## Outcome

1. I do not uphold Mr N'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 N's complaint about Phoenix Life is that he was not informed how legislative changes in April 2015, would affect his entitlement to benefits in the Policy.

## Background information, including submissions from the parties

4. Mr N divorced his wife, Mrs N, in 2001. As part of the settlement, an earmarking order (**the Order**) was placed on the Policy. Among other things, the Order said:

"Within 56 days [Mr N] shall assign to [Mrs N] all his interest in [the Policy] and in the meantime shall hold such interest for the benefit of [Mrs N].

Upon the lump sum payable to [Mr N] upon his retirement under the terms of his pension with [Phoenix Life], [Mr N] shall commute the whole of the benefit capable of commutation under the said pension."
5. Accordingly, all the tax-free lump sum and annuity would be payable to Mrs N. However, both Mr N and Phoenix Life agree that if Mrs N were to remarry, only the lump sum would be payable to her.
6. In July 2014, Mr N informed Phoenix Life that Mrs N had remarried and asked what impact this would have on the benefits from the Policy. Phoenix confirmed in writing to Mr N that if Mrs N remarried, she would only be entitled to the lump sum and not to the annuity.
7. In April 2015, new pension legislation was introduced which meant that all the benefits under the Policy could now be claimed as a lump sum.

8. In October 2015, Mr N contacted Phoenix Life again to ask if Mrs N's remarriage would affect her entitlement to benefits from the Policy.

9. On 19 October 2015, Phoenix replied and said:

"I can advise that [the Order] states you must take the whole of the benefit capable of commutation. Since April 2015, under new pensions legislation, the whole value of the [Policy] can be taken as a lump sum. Therefore, as the lump sum part of the [Policy] is payable to [Mrs N] we have to pay her the total value of the [Policy].

You would have to ask for the benefits to be commenced and all the proceeds would be paid to [Mrs N] only as a lump sum. No benefits would therefore be payable to you.

When the earmarking order was originally made the maximum cash lump sum was 25% of the total value and this would have been payable to [Mrs N]. Since April 2015 the new pensions legislation allows 100% of the value to be taken as a lump sum, which will be payable to [Mrs N]".

10. Following an enquiry from Mr N in November 2015, Phoenix Life sent him a copy of the Order and explained again that he would have to take all the benefits as a lump sum, meaning all the benefits would go to Mrs N.

11. On 1 March 2016, Mr N wrote to Phoenix Life saying that, under the terms of the Order when it was issued, he was only entitled to take a maximum 25% as a lump sum. Accordingly, he felt that was all Mrs N was entitled to once she remarried. Phoenix Life replied that it was acting in accordance with the Order, which stipulates that Mr N would have to take the maximum lump sum available, which is now the whole amount. It advised him to seek legal advice if he was unhappy.

12. In April 2016, Mr N instructed solicitors to write to Phoenix Life on his behalf, reiterating his view. Phoenix Life responded, saying that the only other option to taking the whole of the Policy as a lump sum was for Mr N to return to court to ask for the Order to be varied.

13. Mr N raised a complaint with Phoenix Life, who partly upheld it. Phoenix Life said that it does not normally write to customers about changes in legislation, but it recognised that Mr N was negatively impacted on this occasion. It also said that it repeatedly sent the same responses to his enquiries, which would have been frustrating for him, and offered £150 for any inconvenience caused.

14. Dissatisfied with the response, Mr N brought his complaint to us. He said that Phoenix Life failed to inform him how the change in legislation would affect the Order. Phoenix Life says that, on reviewing the correspondence with Mr N, it is now clear that it informed Mr N, in October 2015, how the new legislation would affect the disbursement of the benefits. It also denied repeatedly sending the same responses

to Mr N, adding that it was a mistake to have said so. Phoenix Life said, bearing this in mind, Mr N's complaint should not have been upheld.

## **Adjudicator's Opinion**

15. Mr N'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 below:-
- The Order says that the maximum amount available for commutation should be taken. That was 25% at the time the Order was issued but, since April 2015, new legislation means that the limit has been removed (although, any lump sum taken above 25% will be liable to tax), so Phoenix reasonably decided that all the benefits can now be taken as a lump sum.
  - Contrary to Mr N's claim, Phoenix Life wrote to him in October 2015 to inform him of the change in legislation and how it would affect the Policy.
  - Mr N would have been aware of the implication of the new legislation as he followed the suggestion by Phoenix Life to seek legal advice, and Phoenix Life also wrote to his solicitors on the same matter.
  - Mr N is free to return to court and ask for the Order to be varied, as Phoenix Life cannot do so.
  - Phoenix Life only made an award to Mr N in the mistaken belief that it had done something wrong. In the view of the Adjudicator, an Ombudsman would not make any award to Mr N.
16. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N provided his further comments, but these 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 N for completeness.

## **Ombudsman's decision**

17. Mr N believes that Phoenix Life had a legal responsibility to inform him of the change in legislation before it took place. Although the change occurred in April 2015, he was not informed until October 2015. As a result, he has lost over £27,000 of pension contributions.
18. Mr N has not provided any evidence of the legal duty he ascribes to Phoenix Life. Phoenix Life is not required to inform Mr N of impending changes to legislation before they are made. Furthermore, Phoenix Life informed Mr N of the legislative changes as they affected him in October 2015 in response to his enquiry about the Order.

19. Even if there was an obligation on Phoenix to inform Mr N of the legislative changes within a specific timescale, and I am not of the view that there was, Mr N has not suffered any loss by its failure to do so. I would find it difficult to see how prior knowledge of the legislative changes would have allowed Mr N to influence his ex-wife's marital status.
20. I note Mr N's disappointment, but I do not see any evidence of wrongdoing by Phoenix Life. Therefore, I do not uphold his complaint. It is now a matter for Phoenix Life to decide whether to maintain the offer of £150, and for Mr N to decide whether to accept it. The proper course of action for Mr N is to apply to the Court for it to consider varying the Order.

**Anthony Arter**

Pensions Ombudsman

28 February 2019