Ombudsman's Determination

Applicant	Mr Y
Scheme	Phoenix Life Personal Pension Plan (**the Plan**) Policy Nos: 575703R & 601633L
Respondent	Phoenix Life Assurance Ltd (**Phoenix**)

Outcome

1. Mr Y's complaint against Phoenix 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 shall pay Mr Y £500 compensation in recognition of the significant distress and inconvenience which he has suffered dealing with this matter.

2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr Y complains that Phoenix failed to provide details of the annuity options available to him from the Plan, which he had requested in October 2017, on a timely basis and did not explain satisfactorily why the Plan "pension savings value" (**the Plan Value**) had decreased between September and November 2017. He contends that the delay caused him to draw his pension from the Plan late and he has consequently suffered a financial loss. Mr Y also says that the goodwill compensation payment of £150 offered by Phoenix to settle his complaint is derisory given the significant decrease in the Plan Value and its substandard administration service dealing with this matter.

Background information, including submissions from the parties

4. The Plan is a "With Profit Self-Employed Retirement Plan" (**SERP**) which provided Mr Y with a guaranteed annuity on retirement

5. On 21 September 2017, Mr Y requested details of the benefits available to him from the Plan including fund values for the two Plan policies and any final bonuses payable.

6. Phoenix replied by sending Mr Y a retirement pack on 25 September 2017 which included a "Pension Plan Summary" (**the Summary**), a "Retirement Options Statement" (**the Statement**) and an Annuity Illustration (**the Illustration**).

7. The Summary said that the Plan Value was £77,056.53 at his assumed retirement date of 25 September 2017 and a guaranteed annuity (after taking 25% of the Plan Value as tax free cash) would be payable, as described in the Plan policy document.

8. The Summary also stipulated that:

> "If you choose a different annuity to the one shown in your policy document, it will be calculated using similar annuity rates so you will still benefit from the value of your guarantee."

9. According to the Statement and the Illustration, the definition of Plan Value was "the equivalent value of the guaranteed annuity provided under the Plan". Both documents also stated that the Plan Value of £77,056.53 was not guaranteed and Mr Y's pension benefits might be higher or lower than those specified on the Illustration which were:

   - a joint life annuity of £3,606.25 pa (with an attaching 50% spouse's pension on death after retirement) payable annually in arrears from 25 September 2018;
   - a maximum tax free lump sum of £19,264.13 and a reduced joint life annuity of £2,704.68 pa (with an attaching 50% spouse's pension on death after retirement) payable annually in arrears from 25 September 2018; and
   - a single life annuity of £4,053.17 pa payable annually in arrears from 25 September 2018

10. In his letter dated 9 October 2017, Mr Y again asked Phoenix for details of any final bonuses paid. He also requested that Phoenix provide him with details of 18 single life annuities assuming no tax-free cash was payable which could be purchased with the Plan Value using different permutations of annuity guarantee periods, payment frequency and escalation rate.

11. Mr Y complained to Phoenix on 3 November 2017 that he had not yet received the requested information. Phoenix acknowledged his complaint and in its letter dated 14 November 2017 informed Mr Y that the Plan Value had decreased to £74,099.29 and there were no final bonuses in the Plan. Phoenix also provided Mr Y with details of the 18 single life annuities which he had asked for.

12. After completing its investigation into his complaint, Phoenix sent Mr Y a compensation cheque for £50 on 16 November 2017.

13. In his letter dated 10 December 2017 to Phoenix, Mr Y asked why the Fund Value had decreased from £77,056.53 to £74,099.29 and the available annuity options had been calculated using the lower figure. He also notified Phoenix that he wished to purchase a level annuity payable quarterly in arrears with a 10-year guarantee and asked it to calculate this annuity using the higher Plan Value.

14. In its letter dated 22 December 2017 to Mr Y, Phoenix said that:

> "Notional Cash Factors (**NCFs**) are used to convert the guaranteed basic pension into a cash value.

The NCFs are regularly monitored in line with changing markets and can go up or down. NCFs place a cash value on the guaranteed minimum pension based on long-term interest rates available in financial markets and other factors such as the life expectancy of the policyholders. NCFs are reviewed at least quarterly with new NCFs being implemented on 31 March, 30 June, 30 September and 31 December. If there are significant changes to the NCFs between these dates (for example due to a large change in long term interest rates), then we will review NCFs more frequently than every quarter.

On retirement, policyholders can take their benefits either as a pension to be paid each year in retirement or as a lump sum amount…obtained by multiplying the guaranteed pension by the NCF in force at the date of retirement.

The NCFs implemented on 6 October 2017 were lower than those…on 1 September 2017. Where final bonuses are not being added, the cash value at retirement will only be affected by the change in NCFs. Since NCFs have decreased, policyholders will see a decrease in the cash value available to them at retirement.

We are happy to proceed on the basis you have selected. However, before going ahead…can you please call our customer contact centre to discuss the additional options that may be available to you. We are unable to settle the claim on this policy until you have spoken to us."

15. In his letter dated 16 January 2018, Mr Y said that:

"…discussion with your customer contact centre doesn't really achieve anything but you endeavour to direct me towards it nonetheless. Phone calls are no substitute for written answers.

Your letter of 22 December described processes only and either did not fully answer the substantive questions I asked on 10 December and subsequently, or omitted to answer questions altogether."

16. Phoenix acknowledged receipt of Mr Y's complaint and sent him a new quotation showing the retirement options available to him based on a Plan Value of £74,654.19 and a retirement date of 18 January 2018. In its covering letter of the same date, Phoenix said that:

"Our contact centre would normally go through the risks and considerations with you for your chosen option however I have put these into writing and enclosed them with the claim forms…

I can confirm that your queries regarding the change in values will be answered…by our complaints department."

17. In his letter dated 25 January 2018 to Phoenix, Mr Y responded as follows:

> "You already sent me a retirement pack on 25 September 2017 and additional options on 9 November. I selected from these options and gave instructions in my letter dated 10 December 2017. You did not act on those instructions.
>
> I have completed the appropriate form from this new pack…Please action my instructions immediately.
>
> In view of your wholly unnecessary delay and bearing in mind the instructions I gave on 10 December, I require a first quarterly instalment on 18 March, not the 18 April date you propose, and quarterly thereafter."

18. In his letter dated 26 January 2018, Mr Y said that the difference in the Plan Values quoted amounted to an annuity difference of about £156 which over 20 years would be a considerable sum.

19. Phoenix apologised to Mr Y on 13 February 2018 for the delay in sending him the requested information which had been caused by "an administration error". It also informed him that:

    - it would honour the guaranteed annuity available to him regardless of how the Plan investments had performed;
    - as the cost of providing him with the guaranteed annuity was more than the Plan Value, the tax-free cash and transfer value available to him could be lower;
    - a Plan Value of £74,172.34 would secure a guaranteed annuity commencing on 17 December 2017 of £3,923.72 pa payable quarterly in arrears with a 10-year guarantee period; and
    - it would like to offer him a goodwill compensation payment of £100 for the distress and inconvenience which it has caused him

20. On 16 February 2018, Phoenix informed Mr Y that his annuity had been set up and the first payment would be made by 17 March 2018 "on a without prejudice basis".

21. In its letter dated 20 April 2018, Phoenix informed Mr Y that:

    - it uses the London Inter Bank Offer Rate (**LIBOR**) swap rates to approximate future returns which are then used as discount rates when calculating the NCFs;
    - SERP policies provide a guaranteed minimum pension which is not affected by the Plan Value or any changes to the NCF factors;
    - when the annuity is calculated at the retirement date, the guaranteed pension is compared to the pension that could be purchased on current annuity rates using the Plan Value;
    - if the annuity that could be bought using the Plan Value on current annuity rates is greater than the guaranteed pension, the higher amount is paid;

- the annuity of £3,923.72 pa payable to him calculated using current annuity rates was slightly higher than the guaranteed pension at that date of £3,908.82 pa; and
- it was willing to increase its compensation offer for the poor administration service it had given him and the delay in dealing with his complaint to £150

22. Mr Y rejected the compensation offer which he considered derisory. He was also dissatisfied with the explanation given by Phoenix for the decrease in the Plan Value.

23. In September 2018, Phoenix provided a detailed explanation to the Pensions Ombudsman on how the guaranteed annuity and the Plan Values were calculated. It said that:

> "Mr Y's policies were with profits deferred annuity policies. Their guarantees took the form of guaranteed pensions to be paid…in retirement. Basic guaranteed pensions were set when the policies were taken out. Up until 2003, annual bonuses were added which increased the guarantees. Since 2003, annual bonuses have been zero because the values of the guaranteed pensions are already very high compared to the value of the assets in the with profits funds...
>
> On retirement, a final bonus can sometimes be added. Final bonuses are set …to aim to pay a cash value …equal to the asset share under a with profits policy (the asset share is the value of the premiums paid, accumulated at the investment return earned, and less any expenses incurred).
>
> However, in the case of Mr Y's policies, the value of the guaranteed pension exceeds the asset share by a considerable margin. Consequently, the cash pay-out that was offered to Mr Y when he retired on 17/12/17 of £74,172 is considerably in excess of his asset share. This value represents a return on the premiums he has paid of 8.3% each year net of all costs.
>
> The guaranteed pension benefits vary depending on the age at which the policyholder chooses to take retirement. The guaranteed pension benefits on Mr Y's policies were as follows…
>
> Since the pension benefit available from Mr Y's policies were guaranteed at the above levels for each retirement age, the amount of pension he would receive does not reduce as a fall in the cash value of the policy.
>
> The amounts of pension shown…are the amounts Mr Y's policy guaranteed to pay him in retirement if he decided to take a pension payable annually in arrears with no guarantee period. It was stated in the original policy schedules that his guaranteed pension would take this "shape".
>
> Policyholders can choose to take a pension of a different "shape" to the one that is guaranteed by their policy. When this happens, we calculate the

amount of pension payable in the new "shape" so that it has the same fair value as the guaranteed pension benefits in the policy…

Pensions which are guaranteed to be paid for a period…provide greater benefits to the policyholder than a pension which ceases immediately on their death. Consequently, such pensions are more expensive and the amount of pension which can be provided for the fair value is lower than the pension amount shown in the policy.

…the reason why Mr Y believes that the value of his pension fell is that he has compared the guaranteed pension on his policy with the pension on his chosen "shape" which is lower for the reasons explained above…the reduction in the pension amount available from the policy is due solely to the reshaping of the benefits and is not connected to the change in cash value."

24. Mr Y says that:

"The fund value is applied to the purchase of an annuity the value of which annuity will depend on the "shape" chosen. Had Phoenix responded promptly to my option request as they did in the first instance – I would have started my annual annuity during October 2017 and received my first quarterly in arrears annuity payment during January 2018, two months earlier…and the annuity amount would have been based on the earlier and higher fund value…

A delay at the start of an annuity is simply quantifiable lost money, i.e. here it's two thirds of a quarterly annuity payment. Their compensation offer does not therefore come close to my actual and ongoing financial loss, or my time and the wholly unnecessary effort and cost or the related stress caused."

"….to settle the matter I am, as your findings propose, prepared to accept the additional annuity sum of £326.98 (gross) plus the sum of £500.00 in compensation for the significant and wholly unnecessary distress and inconvenience I have suffered."

25. Phoenix says that:

- Mr Y requested on 25 January 2018 for quarterly annuity payments in arrears to commence from 18 December 2018. The first payment was therefore due on 18 March 2018. It had been open to him to ask for the first payment to be made on 18 February 2018 but he chose not to do so. Mr Y informed it that that he wanted the first instalment paid on 18 March 2018 to coincide "with other payments" and so receiving it on 18 February 2018 presumably did not suit him. It is therefore not prepared to pay an additional annuity sum of £326.98 (gross) which Mr Y has requested to settle his complaint.

Adjudicator's Opinion

26. Mr Y's complaint was considered by one of our Adjudicators who concluded that further action was required by Phoenix. The Adjudicator's findings are summarised briefly below:

- Phoenix responded promptly in September 2017 to Mr Y's original request for details of the benefits available from the Plan by sending him a retirement pack but unfortunately failed to answer his question about final bonuses payable.
- Mr Y therefore had to ask this question again on 9 October 2017 when requesting from Phoenix additional annuity options available to him from the Plan so that he could make a more informed choice.
- Phoenix did not however respond to his request until 14 November 2017 and it was only after Mr Y had complained about the time it was taking to reply. The Plan Value had by this time decreased to £74,099.29 because the applicable NCF used to calculate it in November was lower than the one in force in September 2017.
- However, the amount of guaranteed annuity available to Mr Y from the Plan is only dependent on his age at retirement and the criteria chosen for annuity guarantee periods, payment frequency and escalation rate. Phoenix must pay Mr Y the guaranteed minimum pension regardless of how the Plan investments have performed. The fact that the Plan Value had decreased between September and November 2017 therefore did not affect the amount of annuity payable to Mr Y unless the annuity available to him based on current annuity rates was higher (as in Mr Y's case). Phoenix was liable for making up any deficit to secure Mr Y's guaranteed annuity and a decrease to the Plan Value just meant that it had to pay more towards the cost of purchasing the annuity using its own funds.
- Mr Y contends that if Phoenix had replied to his request made on 9 October without delay, his annuity could have been established by Phoenix in October 2017 and he would then have received his first quarterly payment in arrears in January 2018.
- Taking over a month to provide Mr Y with the information which he asked for on 9 October 2017 was too long and the delay was clearly maladministration on Phoenix's part.
- With around three weeks left before 31 October 2017 after receiving his request, the tight timescale suggested by Mr Y for completing all the necessary steps before Phoenix could set up his chosen annuity was somewhat unrealistic.
- Phoenix was entitled to have a reasonable amount of time to respond and it was acceptable to expect Phoenix to have supplied Mr Y with the annuity options within two weeks of receipt of his request. On receipt of the information, Mr Y would have needed time examining the options after obtaining a satisfactory response to the questions which he asked about the decrease to the Plan value before informing Phoenix of his annuity choice by completing and returning the relevant benefit payment instruction forms. Mr Y would then have to contact

Phoenix's customer contact centre to discuss the additional options that may be available to him before Phoenix could set up his annuity.

- Mr Y took around three weeks after receiving details of the annuity options before notifying Phoenix of the choice which he had made. In the Adjudicator's view, if the remainder of the process to set up the annuity took the same time, the earliest date upon which it could have been completed was around 17 November 2017 and Mr Y's first quarterly annuity payment in arrears would then have been made on 17 February 2018.
- Mr Y's actual annuity of £3,923.72 pa commenced on 17 December 2017 with the first quarterly payment due on 17 March 2018, i.e. one month later. In the Adjudicator's view, if there had been no delays providing the requested annuity figures and information, Phoenix could arguably have set it up a month earlier and Mr Y would have received an additional one month of annuity, i.e. £326.98 (gross).
- Phoenix had already apologised for the delay in setting up Mr Y's annuity and providing him with this information and offered an improved compensation award of £150 as a gesture of goodwill in recognition of the distress and inconvenience which it has caused him to settle his complaint amicably. In the Adjudicator's view, Mr Y has suffered significant distress and inconvenience and the compensation offer should be increased to £500.

27. Mr Y did not fully accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr Y has 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 Y for completeness.

Ombudsman's decision

28. The evidence is clear that Mr Y has suffered serious distress and inconvenience because of the substandard administrative service Phoenix has sometimes provided him when dealing with his requests for information about the Plan in order to make an informed decision on how and when to take the benefits available from the Plan.

29. Mr Y has requested that Phoenix should award him in addition to the "distress and inconvenience" compensation payment of £500 an annuity instalment of £326.98 (gross) which the Adjudicator concluded arguably could have been available if the first quarterly payment was made on 17 February 2018 assuming the maladministration identified had not occurred.

30. I have considered this point, but I note that Mr Y selected his first annuity payment to be made on 17 March 2018. I therefore find, on the balance of probabilities, that he would not in fact have chosen to receive his first payment on 17 February 2018. I do not therefore consider that Mr Y has suffered any actual financial loss because of the maladministration identified.

31. I agree with the Adjudicator that Phoenix's improved compensation award of £150 in recognition of the significant distress and inconvenience which he has experienced dealing with this matter is inadequate and should be increased to £500.

32. Therefore, I partly uphold Mr Y's complaint and make the appropriate directions below to remedy the significant non-financial injustice which Mr Y has suffered.

Directions

33. Within 21 days of the date of this Determination, Phoenix shall pay Mr Y £500 compensation in recognition of the significant distress and inconvenience which he had suffered dealing with this matter.

Karen Johnston

Deputy Pensions Ombudsman
5 February 2019