

**PENSION SCHEMES ACT 1993, PART X**  
**DETERMINATION BY THE DEPUTY PENSIONS OMBUDSMAN**

<b>Applicant</b>	Mr Peter Hinge
<b>Scheme</b>	Phoenix Life Personal Pension Policies
<b>Respondent(s)</b>	Phoenix Life Limited ( <b>Phoenix</b> )

**Subject**

Mr Hinge's complaint, which is against Phoenix Life, is that over the period 2010 to 2013:

1. The normal retirement age (**NRA**) under the policies he had with them was incorrectly shown as 75 and not 60, and they failed to correct this.
2. As a consequence of 1 above, the information about the values of the policies was based on an NRA of 75 and not 60.
3. Phoenix failed to contact him regarding the change by more than 5% in the transfer value for policy no TI001627.
4. There were delays generally in replying to his questions and complaints since 18 May 2012 onwards.
5. There was a lack of information regarding the rebate of management charges.
6. Failed to provide bid prices as at 4 April and 29 May 2012.
7. There was a delay in the payment of the transfer value for policy no TI001627.

**The Deputy Pensions Ombudsman's determination and short reasons**

The following parts of Mr Hinge's complaint against Phoenix should be upheld but only to the extent of non-financial injustice he has suffered:

- the NRA under the policies with them was incorrectly shown as 75 and not 60;
- the transfer values of the policies were incorrectly based on an NRA of 75 and not 60;
- general delay by them in replying to his queries since 18 May 2012;

- lack of information regarding rebate of management charges; and
- failure to provide bid prices as at 4 April and 29 May 2012.

The following parts of his complaint against Phoenix should not be upheld:

- their failure to contact him regarding the change by more than 5% in the transfer value for policy TI001627; and
- the delay in paying the transfer value for policy TI001627.

## DETAILED DETERMINATION

### Material Facts

1. Mr Hinge had set up four pension policies with a provider which was acquired by Phoenix.
2. On 10 May 2010, Mr Hinge wrote to the Phoenix informing them that he would be reaching his normal retirement age (**NRA**) on 9 August 2010 (when he would have been 65 years old) and asking for a current valuation of the four policies he held with them. He attached a letter from Old Mutual Life Assurance dated 29 May 1997 which he said confirmed that the NRA for the policies was 60.
3. Phoenix sent him retirement packs for three of the policies (i.e.T3700019, TI001627 and TE001138) on 24 May 2010 and for the remaining policy (TE001138) on 23 June 2010.
4. On 20 June 2010 Mr Hinge queried with Phoenix what charges had been applied over the last 5 years for policies T3700019 and TE001035; where did they obtain information that he had changed his address; and what was the reason for the reduction in the value of the policies between 31 December 2007 and 24 May 2010.
5. Phoenix responded on 6 July 2010 stating that the charging structure was a benefit fee of £1.02 per month; a capital annual management charge of 5.25% p.a.; an accumulation annual management charge of 1.25 % p.a. (80% of this charge is refunded back to the policy in the form of additional monthly units); investment charge of 0.4% p.a.; and a bid-offer spread of 5.2% (this charge is refunded back to the policy in the form of monthly additions, if premiums are being paid). They added that the address they had for him on their records was marked as 'gone away' and the fall in the value of the policies was due to a decline in the unit bid price from about £7.00 per unit in late 2007 to £5.50 in May 2010.
6. On 20 September 2011 Mr Hinge wrote to Phoenix stating that the valuations he had recently received on his policies assumed that he would be retiring on 9 August 2020, his 75<sup>th</sup> birthday. He enclosed past correspondence which he said confirmed that the policies were originally set up with an NRA of 60. As he was now 66 and needed to review his pension arrangements, he asked for an up to date valuation of his policies to reflect the original NRA of 60. Phoenix

responded on 16 November 2011 quoting the following figures and pointing out that the transfer charge is the difference between the fund and the transfer value:

Policy number	Transfer value	Fund value
T3700019	£60,321.83	£64,227.70
TE001035	£1,642.52	£1,771.91
TE001138	£1,550.80	£1,693.14
TI001627	£12,012.89	£12,313.26

7. On 30 November 2011 Mr Hinge asked Phoenix why there was a transfer charge on the policies when they did not apply to policies he had with other pension providers. At the same time, he raised a formal complaint with Phoenix about the fact that they persisted in sending him documents showing an NRA of 75 even though he had provided them with evidence that his NRA was 60. He also said that there was a transfer cost to the Phoenix's policies when his policies with other providers had none.
8. On 4 January 2012, Phoenix sent Mr Hinge a statement in respect of policy TE001035 which showed a normal retirement date of 9 August 2020.
9. On 6 January 2012, Phoenix wrote to Mr Hinge quoting the following transfer values and stating that these values were based on an NRA of 60 and were not guaranteed:
 

T3700019 = £63,044.51  
 TE001138 = £1,743.17  
 TI001627 = £12,090.93  
 TE001035 = £1,814.19  
 Total = £78,692.80
10. On 20 January 2012, Phoenix informed Mr Hinge that they were in the process of updating their system records to reflect his correct NRA of 60. They apologised for the fact that they had sent him quotations in the meantime based on an NRA of 75. They said that they had arranged for their actuarial department to manually calculate his transfer values based on an NRA of 60, and transfer forms were sent to him on 6 January 2012 for completion and they will process his claim as a priority when they receive the completed forms. They accepted that they had failed to amend their records despite the concerns he had raised and enclosed a cheque for £150 for the inconvenience this had caused him.

11. On 31 January 2012, Mr Hinge wrote to Phoenix stating that they had refused to address the NRA issue he had raised in his letter of 10 May 2012 and subsequent correspondence. He said that he had wanted to set up an income drawdown arrangement in May 2011, but was advised that he would have to transfer the funds he had with Phoenix, and other providers, to a SIPP/income drawdown arrangement at the same time which meant resolving the retirement date with Phoenix first. On 31 May 2011 he believed the unit price of the European Fund was £2.746 Capital Units and £7.118 Accumulation Units, which made the total value of his fund £99,000. The unit price on 12 January 2012 was £2.201 Capital Units and £5.83 Accumulation Units, making the total value of his fund £81,000. The delay by Phoenix in addressing his concerns has prevented him from drawing a pension at an advantageous time and cost him thousands of pounds in lost income.
12. Phoenix responded on 17 February 2012 referring to Mr Hinge's comment that he wanted to set up an income drawdown arrangement in May 2011 and said that they were unable to find that he had contacted them in May 2011. They said that the first contact they were able to locate regarding his policies was his telephone call of 15 September 2011 and during this call he had enquired about the drawdown option. They were not aware that he wished to take the drawdown option until 1 December 2011. With regard to the unit prices at 31 May 2011, the values of the policies could not be guaranteed as they were unit linked. There was always an element of risk involved with a unit-linked policy where the values can go down as well as up.
13. Mr Hinge wrote to Phoenix on 25 February 2012 pointing out that he had written to them on 10 May 2010 stating that he would reach his NRA of 65 on 9 August 2010 and requested valuations of the policies together with a note of the options open to him. He also pointed out that previous illustrations he had received had been set up with a retirement date of 9 August 2020. He added that whether he wished to buy an annuity from Phoenix or another provider or set up a capped income drawdown arrangement was irrelevant; the fact remained that Phoenix by failing to address the retirement age issue in May 2010 deprived him of the opportunity to take the benefits from his policies at the time of his choosing.

14. Phoenix responded on 13 March 2012 saying that they accepted that Mr Hinge had written to them in May 2010 informing them of the incorrect NRA. However, after that they did not receive any further contact from him until September 2011. Therefore, they did not believe that they could be held responsible for him not taking his benefits earlier. They apologised that he was still receiving documents showing his NRA to be 75, but due to complications involved in amending their system and their belief that he would be transferring his benefits, they had not changed the NRA. On receipt of the completed transfer forms they would calculate the value of his policies based on the correct NRA of 60.
15. Mr Hinge received a transfer value quote dated 19 March 2012 from Phoenix for policy number TI001627. The quote showed the transfer value and the notional fund value as at that date to be £13,482.41 and £13,991.38, respectively. The quote stated that the transfer value as shown was not guaranteed and could be a different amount if he decided to proceed.
16. On 23 March 2012, Burgess & Lee Ltd, Mr Hinge's IFA, sent him three instructions forms and a lost policy form. They said that the form for policy TI001627 had been sent to them under separate cover and they would post it to him as soon as they received it.
17. On 17 May 2012 Phoenix wrote to Mr Hinge apologising for the fact that a number of letters had been issued to him with a NRA of 75. They said that the letters were produced automatically by their system as the amendments had not been completed. They confirmed that they had received completed transfer forms for policies T3700019, TE001138 and TE001035 from his receiving scheme, Curtis Bank PLC, on 4 April. They stated that transfer values were calculated by their actuarial department based on an NRA of 60 and they had paid a total transfer value of £70,693.25 to Curtis Bank PLC. They said that the reason why the transfer value for policy TI001627 was not included was because Curtis Bank PLC did not detail this in their request.
18. On 18 May 2012, Mr Hinge wrote to Phoenix stating:

“I note that the actual transfer value for the policies detailed below were calculated as at 4 April 2012:  
T3700019 £66920.14  
TE001138 £1848.36

TE001035 £1924.75

However it is essential (not to mention standard practice) to provide details of the number of units sold and the value per unit on 4 April for each of the above policies. I believe this information has already been requested by Burgess & Lee, the Independent Financial Advisers.

I received the policyholder's instructions form for each of the above policies for signature with a letter from Burgess & Lee dated 23 March 2012. Each policyholder's instruction form included an estimated transfer value for each policy which presumably included a transfer charge. The estimated transfer value were as follows:

T370019 £67803.12

TE001138 £1736.06

TE001035 £1838.30

The actual transfer values for policies TE001138 and TE001035 presumably did not include transfer charges and were slightly greater than the estimated transfer values. The actual transfer value for policy T3700019 presumably did not include a transfer charge but was LESS than the estimated transfer value. As each policy was invested in the same European Pension Series OM3 units it is not possible to apply different unit values to each policy. **There is an error here that requires investigation.** Why was the actual value of Policy no. T3700019 at £66920.14 less than the estimated value (which included a transfer charge) of £67803.12?"

19. Phoenix responded on 2 August 2012 apologising for the delay in responding. They confirmed the transfer values as at 4 April 2012 calculated for policies T3700019, TE001138 and TE001035 and included a table which showed the number of units, bid prices on 4 April and how the transfer values were calculated. They said that they received the completed transfer form for policy TI001627 from Curtis Bank PLC on 29 May 2012 and calculated the transfer value for this policy based on an NRA of 60. They processed the transfer claim for this policy on 29 June and paid a transfer value of £12,842.73 to Curtis Bank PLC. They included a table showing the number of units, bid prices and total value for policy TI001627. They acknowledged that they held an incorrect NRA of 75 for him on their system. However, the values he received based on an NRA of 60 were less than the values if the NRA was 75. The reason for this is because when the NRA was 75 his policies continued to receive rebate payments after age 60. During the calculation process they had to add the benefit fee charges deducted following his 60<sup>th</sup> birthday back to the policies and deduct the rebate payments that had been added to his policies after he reached age 60

(approximately seven years' worth of rebate payments). A cheque for £50 was enclosed in recognition of the inconvenience caused by the delays cause.

20. On 14 August 2012 Mr Hinge wrote to Phoenix asking for an explanation of how the rebate payments worked and how much had been taken from each policy; why the bid prices on both 4 April and 29 May were £2.365 and £6.312; and why the notional fund value of £13,991.38 quoted in March 2012 for policy TI001627 assumed an NRA of 65. He made a Subject Access Request under the Data Protection Act and asked Phoenix to send him all personal and financial information they held for him.
21. Phoenix responded on 4 September 2012 as follows:
- The rebate payments are a refund of annual management charges levied by the investment managers who control the policy fund and is payable at retirement date after which it ceases.
  - The amounts taken off/added back to each policy due to the incorrect NRA are as follows:
- TI001627 – 132.9897 accumulation units taken off as a result of incorrect rebates and 13.1027 accumulation units added back on as a result of the unnecessary benefit fee deductions;
- T3700019 - 639.0942 accumulation units taken off as a result of incorrect rebates and 13.1555 accumulation units added back on as a result of the unnecessary benefit fee deductions;
- TE001138 – 14.7521 accumulation units taken off as a result of incorrect rebates and 13.1027 accumulation units added back on as a result of the unnecessary benefit fee deductions; and
- TE001035 – 16.7401 accumulation units taken off as a result of incorrect rebates and 13.1027 accumulation units added back on as a result of the unnecessary benefit fee deductions.
- The letter of 2 August 2012 had wrongly stated that the transfer value for policy TI001627 was calculated as at 29 May 2012. The transfer value had in fact been calculated and paid out as at 4 April 2012, the same date as for the other three policies. The bid prices as at 29 May were 2.0510 capital units and 5.504 accumulation units and since these prices were significantly lower than those as at 4 April 2012, he had gained.
  - With regards to the value for policy TI001627 being assumed to have a retirement age of 65, this was due to an error in the letter sent to him. The letter wrongly stated that the quoted value of £13,482.14 on the transfer form assumed an NRA of 65. The value was calculated assuming an NRA of 75.
22. On 4 October 2012, Phoenix provided Mr Hinge with the personal information they held for him.



23. As the matter could not be resolved to Mr Hinge's satisfaction, he brought his complaint to me.

### **Summary of Mr Hinge's position**

24. He says that at no time have Phoenix provided him with illustrations showing the correct benefits and entitlements available to him at the selected NRA. This made it impossible for him to make an informed decision about his retirement.
25. Phoenix have not paid out the correct fund values, e.g. for policy T3700019 a fund value of £72,975.79 and a transfer value was £67,803.12 were quoted – the difference being the transfer charge. Phoenix advised him and his IFA that a transfer charge would not apply, but only £66,920.14 was paid out. With policy TI001627 Phoenix failed to follow their own procedures to his detriment.
26. The quotation dated 19 March 2012 showed a transfer value and fund value of £13,482.14 and £13,991.38, respectively. But the transfer value paid was £12,842.73.
27. A letter dated 21 March 2012 from Phoenix to his IFA indicated that four transfer packs were issued, but his one pack was missing. The papers for this missing pack were eventually faxed, after numerous reminders by his IFA, on 11 May 2012.
28. Phoenix should pay the correct funds without deduction of penalties.
29. Phoenix should compensate him for their maladministration as a result of which there was a delay in him being able to draw a pension from his SIPP.

### **Summary of Phoenix's position**

30. They had acquired several different closed books for other providers over many years. This meant that they had to amalgamate different systems in order to administer the policies concerned.
31. They provided Mr Hinge with incorrect information and apologised for any inconvenience this had caused him. They have subsequently provided him with correct figures and an explanation.

32. The system did show an incorrect NRA of 75 but they provided him with correct quotes and put notes on their system to show the error. Unfortunately the automated correspondence still showed an NRA of 75 and they apologised for this.
33. They explained that the change to the NRA on his policy was complex and extremely time consuming as it involved some major system changes. Given the fact that he was looking to retire it was likely that the benefits would be paid before the alterations would be completed. The transfer was completed in May 2012. The transfer values for the policies as at 4 April 2012 for NRA 60 and 75 are:

<b>NRA</b>	<b>T3700019</b>	<b>TE001138</b>	<b>TE001035</b>	<b>TI001627</b>
60	£66,920.14	£1,848.36	£1,924.75	£12,842.73
75	£68,612.96	£1,734.97	£1,852.54	£13,431.37

The difference between the figures at 60 and those at 75 are the charges/rebates.

34. They confirm that they have paid the correct transfer values for the policies.
35. They sent him a cheque for £150 in January 2012 for failing to amend their records with regard to his normal retirement age; and another for £50 in August 2012 for the delays caused in calculating and processing the transfer.

## **Conclusions**

*The NRA under the policies were incorrectly shown as 75 and because Phoenix failed to correct this the information about the transfer values were based on a NRA of 75 and not 60*

36. Mr Hinge's letter of 10 May 2010 to Phoenix was confusing because he referred to both an NRA of 65 and 60. However as the Phoenix's records at that time showed an NRA of 75 for these policies, this should have alerted them to his query but it did not. He wrote to them again in September 2011 about the NRA but they continued to send him figures and statements based on an NRA of 75.
37. It was not until January 2012 that Phoenix quoted transfer values based on an NRA of 60. Phoenix had explained that it would be time consuming and involve some major changes to their system to change the NRA for Mr Hinge's policies

from 75 to 60. However, they say that the transfer values they paid to his SIPP were manually calculated and based on an NRA of 60.

38. I find that it was maladministration on the part of Phoenix for failing to correct the NRA under the policies prior to January 2012. However, the transfer values they paid to Mr Hinge's SIPP were based on an NRA of 60.
39. Mr Hinge says that he should be compensated for the delay in being able to draw a pension from his SIPP. The first indication that he was considering drawing his pension in May 2011 was in his letter of 31 January 2012. His letters in May and June 2010 to Phoenix requested valuations for the four policies and the charging structure. He next made contact with Phoenix in September 2011 and once again he asked for a valuation of the four policies. There is no correspondence prior to 31 January 2012 to show that he had informed Phoenix that he wanted to draw his pension as from May 2011. I am therefore unable to find that, on the balance of probability, he would have drawn his pension from his SIPP in May 2011, had Phoenix provided him with correct transfer value figure earlier than they did.
40. For the reasons given above, apart from non-financial injustice, in the form of distress and inconvenience, I am unable to find that he has suffered an injustice. I therefore uphold this part of his complaint, but only to the extent of the non-financial injustice he has suffered.

*Phoenix failed to contact him regarding the change by more than 5% in the transfer value for policy T1001627*

41. Phoenix quoted a transfer value of £12,012.89 for policy T1001627 in September 2011 which was based on an NRA of 75. The transfer value quoted in January 2012 for this policy based on an NRA of 60 was £12,090.93. Therefore, the change in the transfer value was 0.6%, and not 5%, and was in Mr Hinge's favour. In addition, the transfer value for this policy that was paid to his SIPP was £12,842.73 which is higher than September 2011 or January 2012 quotation.
42. The transfer value quoted on 19 March 2012 was £13,482.14, but the quotation clearly stated that the transfer value could not be guaranteed. In addition, this figure is not more than 5% than the transfer value of £12,842.73 that was paid.

43. In my view, there was no requirement for Phoenix to contact him regarding the change in the transfer value for this policy and even if there was I am unable to find that he has suffered any loss. I therefore do not uphold this part of his complaint.

*General delays by Phoenix in replying to Mr Hinge's questions and complaints since 18 May 2012*

44. Phoenix could and should have responded to the queries raised by Mr Hinge in his letter of 18 May 2012. They did not respond until 2 August and 4 September 2012. Such a delay is maladministration and Phoenix have apologise for the delay. As the transfer values for the policies had been paid to his SIPP before he had raised his queries, I am unable to find that, apart from non-financial injustice, he has suffered any loss.
45. Apart from the delay in responding to Mr Hinge's letter of 18 May 2012, I am unable to find that there have been any other delays by Phoenix in responding to his queries and complaints since that date.
46. For the reason given above, I uphold this part of his complaint but only to the extent of non-financial injustice he has suffered.

*Lack of information regarding the rebate of management charges*

47. When Mr Hinge was provided with details of the transfer values in January 2012, Phoenix should have informed him of the rebate of management charges and explained how the transfer values were calculated taking account of these rebates. Phoenix's failure to do so is maladministration. However, apart from non-financial injustice, I am unable to find that he has suffered a loss.
48. For the reason given above, I uphold this part of his complaint but only to the extent of non-financial injustice he has suffered.

*Provisions of bid prices as at 4 April and 29 May 2012*

49. The bid prices as at 4 April and 29 May 2012 were provided to Mr Hinge by Phoenix in their letters of 2 August and 4 September 2012, respectively. Phoenix could and should have provided this information earlier and failure to do so is maladministration. However, apart from non-financial injustice, I am unable to find that he has suffered a loss.

50. For the reason given above, I uphold this part of his complaint but only to the extent of non-financial injustice he has suffered.

*Delay in paying the transfer value for policy TI001627*

51. Phoenix said in their letter of 20 January 2012 to Mr Hinge that they had sent him transfer forms for all four policies, including policy TI001627, which he needed to complete if he wished to proceed with the transfer of his benefits. These forms were never returned.
52. In their letter of 13 March 2012 to Mr Hinge, Phoenix stated that on receipt of the completed transfer forms they would calculate the value of his policies based on the correct NRA of 60. On 23 March 2012, Mr Hinge's IFA sent him forms for three policies and told him that the form for policy TI001627 had been posted to them and would be sent to him as soon as they received it. Phoenix did not receive the completed form for policy TI001627 from Curtis Bank PLC until 29 May 2012. However, they calculated the transfer value for this policy based on the bid prices as at 4 April 2012.
53. For the reason given above, even though the transfer value for policy TI001627 was paid after the transfer values for the other three policies, I do not consider that this delay was the fault of Phoenix. Furthermore as the transfer value was calculated as at 4 April 2012, Mr Hinge has not suffered any loss. Therefore, I find that there has been no maladministration and do not uphold this part of Mr Hinge's complaint.

**Directions**

54. Phoenix have sent Mr Hinge two cheques in 2012 totalling £200. However, he says that he did not bank these cheques. It is unlikely that these cheques can now be banked so I direct that, with 28 days of the date of this determination, Phoenix should ensure Mr Hinge receives £250 for the non-financial injustice he has suffered.

**Jane Irvine**  
Deputy Pensions Ombudsman

1 August 2014