

Ombudsman's Determination

Applicant	Mr S
Scheme	Phoenix Life Retirement Annuity Contract (Annuity Contract)
Respondent	Phoenix Life (PL)

Outcome

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

Complaint summary

3. Mr S has complained that due to the incorrect retirement quotation he received from PL, he made the decision to retire. He further complains that if PL had provided him with the correct values he would have continued to work until age 70.

Background information, including submissions from the parties

4. In December 2015, Mr S' independent financial advisor (**IFA**), contacted PL asking for quotations of Mr S' fund valuation projections and proposed annuity rates for retirement at age 65.
5. On 21 December 2015, PL sent Mr S a retirement option pack which stated that the benefits shown were projected to age 65 but the figures quoted were actually projected to age 75.
6. On 17 February 2016, PL sent a further quote to Mr S showing that a projected 10year guaranteed annuity was £19,300 per annum as at 28 March 2017 (age 65). However, this was based on a projected fund value of £205,000, which had been incorrectly projected to age 75, rather than age 65, over inflating its value.
7. On 22 June 2016, PL sent Mr S a further quote which showed projected benefits to age 65 and a fund value of £211,644.55. However, the £211,644.55 was his fund value projected to age 75 again, rather than age 65.

8. Mr S has said that upon receiving the quotation on 22 June 2016, and following discussion with his IFA, he decided that he would resign from his employer and formally gave notice that he would retire.
9. On 26 July 2016, a retirement option pack was issued to Mr S which had the projected fund value of £158,597.22. However, the annuity quoted was not calculated using guaranteed annuity rates, and so underquoted the annual annuity to be between £5,028.69 and £7,590.48.
10. On 2 September 2016, a further retirement pack was issued to Mr S which confirmed an annual annuity of between £6,685.82 and £6,707.6 based on a projected fund value of £154,519.24. PL again failed to use guaranteed annuity rates.
11. On 30 September 2016, Mr S' IFA wrote to PL confirming that Mr S wanted to take benefits from the Annuity Contract when he reached age 65 on 28 March 2017.
12. On 12 October 2016, PL quoted Mr S an annuity of £13,920.41 per annum, calculated using guaranteed annuity rates based on a fund value of £154,519.24.
13. On 8 March 2017, Mr S complained to PL. He said he was unhappy that the projected value he was quoted in February and June 2016 were less than the value quoted in October 2016.
14. On 15 March 2017, PL wrote to Mr S and confirmed that due to an error, the projections provided in February and June 2016 were issued quoting a fund value incorrectly projected to age 75 rather than age 65. PL explained that on 22 December 2016, the fund value quoted was £154,519.24. As it was only three months until Mr S' 65 birthday, it would have been evident that it was most unlikely that in this time the fund value would grow in excess of £57,000, or an increase of a third of the value.
15. PL offered Mr S £200 as compensation for the error in the quotation sent to him in June 2016.
16. Mr S had further correspondence with PL and as a result it agreed to increase its offer of compensation for quoting incorrect values and the delay in resolving his complaint to £1,000 and to backdate his retirement to 28 March 2017. In addition, PL agreed to pay the arrears on the annuity payments since 28 March 2018 with late payment interest of 8% net.

Adjudicator's Opinion

17. Mr S' complaint was considered by one of our Adjudicators who concluded that no further action was required by PL. The Adjudicator's findings are summarised briefly below:-
 - PL has agreed that there were errors in the quotations provided to Mr S in December 2015, February 2016 and June 2016 which resulted in it providing

incorrect over inflated annuity figures, so there is no dispute that a problem has occurred.

- The provision of incorrect information is maladministration and this has been accepted. However, the fact that Mr S received the incorrect quotations does not confer on him the right to those incorrectly stated benefits. Mr S is only entitled to the benefits calculated in accordance with the insurance policy conditions.
 - The Adjudicator appreciated that Mr S had said that he relied on the incorrect quotation in question. However, the Ombudsman's approach in cases like this is that members are only entitled to the correct benefits under the terms of the insurance policy and not the incorrect benefits quoted in error.
 - The Adjudicator thought it was reasonable to conclude that Mr S should have been aware there was an error and have questioned the information that he was given. The figures quoted in February and June 2016 were vastly different to those quoted in July and September 2016, and then further figures were provided in October 2016 which differed again. Further she noted that in February 2016 Mr S was quoted £205,000, but in June 2016 he was given a quote of £211,644.55. In her view it would have been reasonable for Mr S and/or his IFA to question the fluctuating figures that they had been provided with. The majority of this information was provided prior to his date of leaving employment and the reminder provided prior to his chosen retirement date.
 - The Adjudicator considered Mr S' comments concerning the Ombudsman's previous decision which he thought had a bearing on this case. However, she was of the opinion that the circumstances of that case are different to Mr S'. In that case it was shown that the figures had been relied upon to that individual's detriment which is why an award was warranted. Mr S has not evidenced that he relied on the incorrect quotations to his detriment, and so the only loss he has suffered is a loss of expectation. Also, the reliance needs to be in good faith and the adjudicator was not satisfied that Mr S had met the good faith requirement as she thought it was reasonable for him to have been aware of the errors in the information he received.
 - The Adjudicator was of the opinion that Mr S' complaint should not be upheld. She recognised that Mr S has suffered significant disappointment that the annuity previously quoted was incorrect and that PL have made a series of errors in the information provided. However, PL have offered to pay Mr S £1,000 in recognition of the maladministration; backdate his retirement date to 28 March 2017; and pay the outstanding annuity payments, together with late payment interest of 8% net.
18. Mr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr S 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 S for completeness.

Ombudsman's decision

19. Mr S says that he should be entitled to receive the quotations provided to him by PL and PL should make good the difference between the incorrect figures and the correct ones. However, in addition to the reasons given by the Adjudicator, I do not find that the quotations in question constitute a legally binding agreement.
20. Mr S is entitled to the correct level of benefits in accordance with those set out in the insurance policy unless he can prove that he suffered direct financial loss as a result of relying on the incorrect quotations sent to him. PL has explained due to an error, the projections provided were incorrect. There is no dispute that maladministration occurred when Mr S was sent the incorrect benefit quotations and I have a great deal of sympathy for the frustration he has experienced, as there were a number of errors made by PL, not just in respect of calculating the fund value projected to age 75 instead of 65, but also, then failing to use the guaranteed annuity rate. However, for the reasons set out below I do not find that the incorrect quotations have resulted in Mr S incurring a financial loss.
21. In order to conclude that a complainant has suffered direct financial loss as a consequence of a misstatement made to them I have to be satisfied, on the balance of probabilities, that they reasonably relied upon the misstatement when making their decision and, had they known the correct state of affairs, they would have acted differently, the burden of proof is on the complainant.
22. In this case I do not consider that Mr S has demonstrated, on a balance of probability, that he would have made a different decision to the one that he made had he been given the correct values. As stated by the Adjudicator in her Opinion, Mr S received the majority of the quotations prior to the date of Mr S leaving employment, and all the estimates were provided, including the correct ones, prior to his chosen retirement date. He had also engaged the services of an IFA. Yet there is no evidence to suggest that he queried the vast fluctuations in the various quotations. I cannot see any reason to conclude that he would probably have acted differently if he had been made aware of the correct position in February and June 2016.
23. There is no dispute that the issuance of incorrect quotations would have caused Mr S significant distress and inconvenience. However, I find that the compensation offered by PL is appropriate and within the range that I would have awarded, so I do not consider it appropriate to make a higher award.
24. It is open to Mr S to accept PL's offer of £1,000, in addition to the other compensatory measures that they have offered and he should contact PL if he wishes to do so.

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25. Therefore, I do not uphold Mr S' complaint.

Anthony Arter

Pensions Ombudsman
18 September 2018