

The complaint

Mr F and Mrs W's representative, a Claims Management Company (CMC), complains on their behalf that they were given unsuitable investment advice by Phoenix Life Assurance Limited (the business).

In short, the CMC says:

- They were advised to invest at the wrong time as Mr F was being made redundant.
- Too much money was invested.
- The investment was high risk.

What happened

In late 2000, Mr F and Mrs W were advised to invest £15,000 into a With-Profits Investment Plan. Although the plan had no fixed end date, they were recommended to invest for a minimum of five years. The investment was encashed in March 2005 for £15,955.

The business didn't uphold the complaint. In short, it said:

- The recommendation was suitable for Mr F and Mrs W.
- It met their objective for potentially achieving higher gains than a deposit account.
- The With-Profits fund into which their money was invested is a low risk investment and was suitable for cautious risk investors such as them.
- Although the CMC says that Mr F was unemployed, it was recorded at the time that he was employed and in receipt of a salary.
- They were provided with policy documentation and the Illustration document which made clear the nature and operation of the investment. No guarantees were given about the level of returns.
- Upon encashment in 2005, the investment proceeds were provided to Mr F and Mrs W in a cheque for re-investment with another business.

One of our investigators considered the complaint and thought it should be upheld. In summary, he said:

- Having reviewed the documentation he's satisfied that Mr F and Mrs W were low-risk cautious investors.
- He doesn't think the advice to invest in the Investment Plan was unsuitable given Mr F and Mrs W's circumstances. They had some capacity to invest and were willing to take a small risk with their money.

- Mr F and Mrs W had a total of £20,000 in assets, comprised of £2,000 invested in stocks and shares and £18,000 held in a deposit account. The recommendation to invest £15,000 meant that they were left with only £3,000 for emergencies.
- Whilst he's seen no evidence to suggest that Mr F was being made redundant, he still thinks they weren't left with a reasonable amount of cash for emergencies.
- Even though Mr F and Mrs W intended to re-invest the proceeds in 2005, this doesn't mean the recommendation made in 2000 was suitable.
- Mr F and Mrs W should be compensated on the basis of investing only 50% of their total investable assets – so £9,000 out of the £18,000 held in a deposit account. And because they were willing to take a small risk with their money redress should be calculated using the 50/50 benchmark.

The business rejected the investigator's view. In summary, it said:

- Mr F and Mrs W were happy to invest £15,000 of their money and felt they had 'sufficient emergency funds at the outset'.
- They made no effort to use the money and upon encashment used the money to re-invest.

The investigator having considered the additional points wasn't persuaded to change his mind.

As no agreement has been reached the matter has been passed to me for review.

At my suggestion the investigator notified the business that whilst I thought the complaint should be upheld, I thought the redress should be different.

I said that on the face of the evidence, and on balance, I don't think Mr F and Mrs W should've been advised to invest any more than £9,000 (50% of their available £18,000 cash), so that they would've had a reasonable amount of cash available for emergencies.

So, in terms of redress, if Mr F and Mrs W had been advised to invest £9,000 instead of £15,000, they would've held the balance of £6,000 in the deposit-based account.

Therefore, redress should be based upon comparing the value of the £6,000 using the fixed rate bond benchmark to reflect the no-risk, with 8% simple interest added to any loss.

Both the CMC and the business agreed with the proposed redress.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I agree with the investigator's conclusions for much the same reasons. I'm going to uphold this complaint.

On the face of the evidence, and on balance, I think Mr F and Mrs W were advised to invest too much money. I think they should've been advised to invest only half of their available cash and not over three quarters of it.

That aside, I'm satisfied that the advice to *invest* (as opposed to being advised to keep their money in a deposit-based account) was suitable. It's evident that they wanted to invest for the future for potentially better returns than a deposit-based account.

I also think the advice to invest in the Investment Plan was suitable. I'm satisfied that Mr F and Mrs W were willing to take a low risk with their money, so I don't think advice to invest in a low-risk With-Profits fund was unsuitable.

Given that they were in their 40's, in good health and employed I'm reasonably satisfied that they – even as first time/inexperienced investors – were in a good position to invest. I've seen nothing to suggest that they were risk-averse.

I appreciate the point the CMC makes about Mr F's employment status, but despite what it says I've seen nothing to suggest that this was the case. The adviser can only go on the information that was provided at the time, and as far as I can see it was recorded that he was employed and in receipt of a salary.

I appreciate the point the business makes about paying out the encashment proceeds in a cheque for re-investment, but that of itself isn't evidence that the advice given in 2000 was suitable.

It might be that Mr F and Mrs W's circumstances changed and that they'd built up savings or received money from a different source – I just don't know. In any case, I'm only considering the suitability of the advice given in 2000 and not in relation to their decision to re-invest the money in 2005.

With the power of hindsight, I appreciate that Mr F and Mrs W remained invested for the recommended minimum five years and made no attempt to withdraw any money. But that notwithstanding, I still think they were advised to invest too much of their available cash, and they weren't left with a reasonable amount of cash for emergencies. Just because they were fortunate enough not to need money for an emergency doesn't make the unsuitable recommendation suitable.

I appreciate Mr F and Mrs W signed the relevant documentation to confirm that they were content to proceed, but I think they'd have done so on advice from the business, and this doesn't mean the advice in 2000 was suitable.

On the face of the evidence, and on balance, I don't think Mr F and Mrs W should've been advised to invest any more than £9,000 (50% of their available £18,000 cash), so that they would've had a reasonable amount of cash available for emergencies.

Putting things right

So, as I've mentioned earlier, in terms of redress, if Mr F and Mrs W had been advised to invest £9,000 instead of £15,000, they would've held the balance of £6,000 in the deposit-based account.

Therefore, redress should be based upon comparing the value of the £6,000 using the fixed rate bond benchmark to reflect the no-risk, with 8% simple interest added to any loss.

My final decision

For the reasons set out above, I uphold the complaint.

My decision is that Phoenix Life Assurance Limited should pay the amount calculated as set out above.

Phoenix Life Assurance Limited should provide details of its calculation to Mr F and Mrs W in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F and Mrs W to accept or reject my decision before 20 July 2020.

Dara Islam
Ombudsman