

The complaint

Mr H complains Phoenix Life Limited (Phoenix), provided him with misleading information that led him to believe he would receive a terminal bonus on his with profits pension plan. He wants to be compensated for being misled into believing his pension would be greater than it is.

What happened

Mr H's pension held two separately identifiable with profits 'pots'. The first was set up in June 1988 with a maturity date of February 2016 (Policy A). The second pot was invested in September 2001, also with a maturity date of February 2016 (Policy B). The maturity date tied in with Mr H's normal retirement age of 65. Despite reaching normal retirement age, Mr H did not draw on the pension and it continued to run.

One of the with profits plans in the pension paid a terminal bonus but the other did not. Phoenix says, whilst there were two separate pots within Mr H's policy, it treated the plan as one fund with a guarantee linked to the total fund overall. Mr H was concerned because he's been a policyholder for some time, and felt the approach looked inconsistent.

After Mr H's 65th birthday, Phoenix explained the policies were moved to a deposit-based fund that now accrues interest as opposed to any bonuses until the benefits are paid out.

Despite this, the statements he received in the years after his 65th birthday, still made reference to the potential of a bonus and failed to explain that he would not be entitled to this.

Mr H wrote to Phoenix to complain about its failure to pay a terminal bonus. He also set out his frustration around the service he had received from them.

In its final response Phoenix provided more information to Mr H on how it had determined what bonus would be paid. It also acknowledged its service could have been better. It apologised and offered £150 for the trouble it had caused to Mr H.

Dissatisfied, Mr H brought his complaint to this service.

An investigator looked into things for Mr H. She upheld Mr H's complaint and awarded him £250 because she felt the statements sent by Phoenix after he reached 65 were confusing. Whilst Phoenix agreed with that outcome, Mr H did not and asked the Investigator to pass the case to an Ombudsman to review that assessment.

When asking for his case to be passed to Ombudsman, Mr H did not offer any additional arguments or set out specifically why he disagreed with the Investigator's conclusion. He did however state he would provide evidence around why he considered Phoenix's services lacking. Despite being given the opportunity to do so, Mr H did not submit any information to substantiate those concerns.

As part of his concerns, Mr H had also complained to Phoenix after they sent him a pension statement that showed an inaccurate benefit value. He then used the incorrect value with his IFA to help plan his retirement. Phoenix apologised to Mr H and offered him £150 for the inconvenience caused. That matter has now been resolved so I won't address it in my decision.

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.

Mr H's complaint focused on several areas:

1. An incorrect valuation – this matter is now resolved so I won't address this any further.
2. The journey that resulted in Mr H being a Phoenix policy holder and whether he is now getting what he signed up to when he originally took out a Sun Alliance policy. I won't address this point as Mr H hasn't provided any arguments or evidence on this and it's a different complaint point that hasn't been addressed by Phoenix or by our investigator.
3. Whether Phoenix misled Mr H in to believing he would receive a bonus.
4. Whether Phoenix communicated in a clear and fair manner.

I will address Mr H's latter two concerns.

Each pot had its own separate policy number and was reported separately in annual statements. On the plan that failed to pay a terminal bonus (Policy A), Phoenix's annual statements that were issued to Mr H included a notice that stated:

A final bonus may be added when benefits are paid from your plan. Please remember that the amount of any final bonus is not guaranteed.

The Phoenix Annual With-Profits Bonus Rate Announcement published in 2016 states:

'Due to recent adverse market conditions, the level of final bonus on some funds has reduced which in turn is impacting maturity values. There are also a significant number of policies where the benefits already guaranteed are higher than the value of the underlying investments and for these policies, we do not add a final bonus'.

In their complaint resolution letter to Mr H, Phoenix stated:

'The final bonus rate for a policy with a term of 27 years which reached normal retirement date in February 2016 was 0%. Consequently, no final bonus was added to policy A at the NRD (normal retirement date)'.

I have seen nothing that suggests Phoenix Life ever made any warranties that a terminal bonus would become payable on Mr H's original with profits fund (Policy A). Phoenix Life is free to determine the specific investment criteria that must be met before it is willing to apply a terminal bonus to a customer's plan. It is not within the remit of this service to dictate when and how that should apply. However, in determining whether Phoenix acted reasonably in its dealings with Mr H, I have considered the information that was in their possession at the time the annual statements were issued.

It seems to me that Phoenix have agreed their initial handling of Mr H's concerns around why a final bonus was not payable on one of his with profits plans could have been explained in a better manner and so it apologised and by way of recognition issued a second letter explaining the reason in more detail.

Phoenix were aware in 2016 that no further annual or terminal bonuses would be applied to either part of the pots. Mr H's retirement savings were then placed into a deposit fund that would not benefit from any regular or final bonuses. Whilst statements were issued annually that confirmed the addition of any bonuses were not guaranteed, by virtue of the fact Phoenix knew Mr H would not be entitled to any further bonuses, these were, in themselves, potentially misleading.

When Mr H reached normal retirement age at 65, Phoenix should have been clearer in their communications with him. That would have avoided Mr H believing he may become entitled to something he never would. Whilst I'm satisfied Mr H didn't make financial decisions in the expectation of receiving a bonus, I do think Phoenix caused confusion here and that should be acknowledged. In line with our usual approach to distress and inconvenience payments, I consider the £250 recommended by our investigator to be fair and reasonable. Whilst I do agree that Phoenix's communications could have been clearer, I do not believe it should pay Mr H a bonus which he isn't entitled to.

My final decision

I uphold this complaint and require Phoenix Life Limited to pay Mr H compensation of £250 for the distress and inconvenience it caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 22 September 2022.

Simon Fox
Ombudsman