

The complaint

Mr D complains that Phoenix Life Limited has paid him an incorrect claim value under his whole of life policy, which was less than it previously quoted. He feels Phoenix Life unreasonably created a loss of expectation and failed to explain why it had initially given out an incorrect value for the policy.

To resolve his complaint, he wants Phoenix Life to pay the additional amount to meet the claim at the value originally set out. He also feels Phoenix Life should increase the amount it has offered him for distress and upset, as he considers the offer was derisory.

What happened

Mr D took out his policy in May 1982 with Century Life plc. The life assured under the policy was his late wife, Mrs D. The operation of the policy was later taken over by Phoenix Life.

In April 2020, Mrs D sadly passed away. Mr D contacted Phoenix Life and completed the relevant forms for it to pay the policy's sum assured – which he understood to be £11,960 as this had been the figure quoted within his most recent policy benefits statement.

Phoenix Life thereafter confirmed the claim value was £9668.28. Mr D's financial adviser queried this on his behalf. He reiterated how, on 30 April 2020, Phoenix Life had written to Mr D with the policy valuation. Though it gave the caveat that the value of the policy was an estimate, it said that as at that date, the surrender value was £9,747.38 and the death benefit (sum assured) was £11,960.

In May 2020, Phoenix Life confirmed it had made an error in quoting an incorrect sum assured for death benefit under the policy. It originally told the adviser that the altered claim value could be due to fluctuation of one of the policy's underlying investment funds. However, the adviser determined this was not the case and informed Phoenix Life as such.

The adviser then assisted Mr D in pursuing a complaint. In June 2020, Phoenix Life rejected the complaint. It said when the policy originally began it had two sums assured, the first of £3,070 and an additional sum assured of £12,000. However the additional sum assured expired after 10 years. From this point forwards, the sum assured under the policy would be £3,070 or the total value of the policy at the time of the claim – whichever was the greater.

When it acquired the policy, Phoenix Life's computer system had mistakenly continued to display the additional sum assured – at a value of £11,960 not £12,000. But it should not have done so. The additional sum assured had expired on 29 May 1992.

Phoenix did accept that it had provided incorrect information and this resulted in Mr D being caused additional upset at an already difficult time.

In July 2020, the adviser brought Mr D's complaint to this service. He explained that Mr D remained unhappy with Phoenix Life. His complaint comprised four points, in summary:

1. he had made financial plans based on receiving the quoted sum assured;

2. the explanation in Phoenix Life's complaint response was unacceptable;
3. the £150 offer for the upset and worry he has been caused is insulting;
4. at no time previously had Phoenix Life informed Mr D that the sum assured would reduce.

The complaint was initially closed at this service, as relevant information was not received to progress it further. However, Mr D's adviser explained he hadn't received correspondence and in 2021, he asked for the complaint to be reopened.

Mr D then supplied further comments. He noted how on his two previous benefit statements of 2018 and 2019, the policy's death benefit had been confirmed at £10,823 and £10,429 – so he had rightly understood it had increased to £11,960 by 2020.

He also supplied statements, letters and other correspondence that he had received over the years, including confirmations of death benefits of £15,758 in 2004 and £17,457 in 2011.

Further, Mr D pointed to a letter he had been sent dated 29 April 2010 which said:

“Additionally, I confirm, [reference] which is a regular premium whole of life policy. On death, we pay out whichever is the highest, either the death benefit or the fund value.”

Mr D also said he had been denied the opportunity of saving or investing the difference of £2,291.72 and Phoenix ought to make up that balance. He also felt that a further £500 was the appropriate amount for the additional stress and upset he has been caused.

Phoenix Life made no further comments and did not supply any additional evidence.

One of our investigators reviewed the complaint. He said though he felt Phoenix Life had made a mistake, its explanation of adding £11,960 incorrectly to the policy's fund value was accurate. For example, on 1 December 2011, the fund value was £5,497.65 but the death benefit was given as £17,457.65. Phoenix Life had unfortunately carried the mistake through up to 2018. From this point onwards, it showed the fund value and the death benefit as the same figures – as they were greater than the guaranteed sum assured of £3,070.

Therefore, the investigator believed Phoenix Life had rightly paid the claim as the fund value when Mr D pursued the claim. It could not pay the £11,960 figure as this was not the fund value or the sum assured. He otherwise felt the compensation it had paid was fair in the circumstances, and it should not be required to do anything more.

Mr D said he disagreed with the investigator. He made a series of further comments, noting:

- though Phoenix Life confirmed the £9668.28 claim value, he hasn't actually received those funds;
- so yet again, he has been denied the opportunity to earn interest on the claim value;
- Phoenix Life has not provided any information at all relating to the complaint;
- if Phoenix Life stopped adding the £11,960 to the fund value from 2018 onwards, why was that figure included as death benefit on the April 2020 statement?;
- the information he has been given over many years is conflicting – and he feels that the fund value could have increased to £11,960 as it was steadily increasing.

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.

I was sorry to learn that Mrs D had passed away and thereafter about Mr D's health issues. I thank him for his efforts in corresponding promptly with our investigator at what I appreciate must be a difficult time. I send my best wishes to Mr D and his family.

I am very disappointed to note that Phoenix Life has failed to comply with our requests for further information and it has not supplied any business file to us relating to this complaint. However, the rules that apply to this service as set out by the Financial Conduct Authority do permit me to take account of the failure by a party to provide information requested and to reach a decision on the basis of what has been supplied.

Having looked at everything before me, I also do not believe Phoenix Life needs to do anything further to resolve the complaint aside from pay the compensation it has already proposed. I realise that won't be the answer Mr D or his adviser have hoped for, but I will provide a summary of my reasons below.

Both parties agree that on 29 April 2010, Phoenix Life sent information about the policy to Mr D, including the quote set out in the background of this decision. It is correct that, in the event of a claim, the higher of either the death benefit (sum assured) or the fund value will be paid.

It is also correct that as of 29 May 1982, the additional £12,000 sum assured that was in place for the first ten years of the policy (to allow for the policy to incorporate some life cover whilst a policy value was accrued) ceased. The primary sum assured/death benefit thereafter was the one in place from the outset – that being £3,070.

However, Phoenix Life (and Century Life before it) confused matters by adding £11,960 to the fund value and quoting this mistakenly as the death benefit sum on annual policy information issued in 2004 and 2011, giving incorrect totals of £15,758.73 and £17,457.

It was only from the statements I've seen supplied by Mr D from 2018 and 2019 which did not make this error. On those two occasions, the death benefit and the surrender value were correctly shown as the same figure (£10,823 in 2018 and £10,429 in 2019). Those statements were accurate.

However, Phoenix Life then made the same mistake again in 2020 when it issued the policy statement with a surrender value of £9,474.38 but a death benefit figure of £11,960. It should not have done so. The death benefit remained at £3,070.

I realise Mr D feels upset at the mistakes that were made – particularly as Phoenix Life has explained that it hasn't been able to evidence why its systems were wrong. Nonetheless, the policy's sum assured (death benefit) was never £11,960, nor was it £15,758.73 or £17,457.

Notwithstanding the upset Mr D has been placed under, the correct response to a business's mistake is to put a consumer in the position they would have been in, but for that mistake. Mr D ought to receive a claim value that is the higher of the policy's surrender value (less the applicable fees) or the sum assured of £3,070. So, in the later years of the policy, this will be calculated from the fund value.

It follows that Phoenix Life was right to conclude the claim value as it did, taking fees from the fund value to confirm a settlement figure of £9,668.28. So, I can't direct Phoenix Life to pay the balance of £2,291 because Mr D's policy did not reach a fund value of that level.

What is clear from the evidence is that Phoenix Life's actions were misleading and confusing

for Mr D, because he placed reliance on the wrongly quoted sum assured/death benefit value and he did not seek to question the basis on which the policy had been set up – even if he was able to recall it. This created a loss of expectation when Phoenix Life told him about a reduced amount in June 2020.

I agree that compensation was due for those errors. Phoenix Life proposed £150 compensation to Mr D's adviser and asked him to confirm acceptance. I haven't seen any evidence that he did so, but Mr D asked on his complaint form to receive an additional £500.

Given the lack of information, I asked our investigator to check with Mr D whether the £150 had been paid to him or not. He has now confirmed it hasn't been paid.

What this service does is consider if a business has treated a customer unfairly because of actions or inactions. And if it has done so, we then go on to consider what ought to be done to put the mistake(s) right. In this case, that is to provide Mr D with the correct claim value, and to compensate him for the loss of expectation he had suffered when he discovered that the April 2020 quoted value wasn't right.

As well as putting right any financial losses in a complaint (though there are none in this circumstance), we also consider the emotional or practical impact of any errors on a complainant. It may be helpful for Mr D to review the guidance available on our website around the types of awards made in instances of upset, inconvenience, trouble and distress caused by businesses in the complaints we see at this service.

Taking into account the impact of the misinformation about the claim value, I believe the payment of £150 was reasonable in the circumstances where Phoenix Life gave an incorrect death benefit/sum assured which led Mr D to expect an incorrect claim value. This caused considerable upset for Mr D at a difficult time; it took several weeks to be rectified and it had a notable short-term impact on Mr D. £150 is an amount I believe appropriate for combined errors of this nature, and I do not believe a further £500 payment is due, as suggested.

Finally, I note that in his response to our investigator, Mr D has suggested that the settlement value for his policy has not actually been paid to him by Phoenix Life, despite confirmation of the correct claim value of £9,668.28 back in May 2020.

On general grounds, if a business has delayed settlement of a claim, interest would be payable on the claim at the rate of 8% simply from the date it should have been paid up to the date of settlement. However, payment of the claim itself hasn't formed part of this complaint – so if the death benefit/surrender value payment has not been made to Mr D, he is free to pursue a complaint about that to Phoenix Life directly in the first instance.

Putting things right

Phoenix Life has already made an offer to pay £150 to settle the complaint and I think this offer is fair in all the circumstances. So this offer must be paid without any further delay.

My final decision

Though I appreciate this will be disappointing for Mr D, I do not believe Phoenix Life Limited needs to do anything further in respect of calculating the policy's settlement value. However, as above, it should pay Mr D the £150 it has already offered in account of the upset he has been caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or

reject my decision before 23 March 2023.

Jo Storey
Ombudsman