

The complaint

Mr R complains that Phoenix Life Limited cut the terminal bonus payable on his whole of life with-profits policy from over £2,000 in 2020, to zero in 2022.

What happened

Mr R took out a regular premium, with-profits whole of life policy in early 1978. I understand that Phoenix took over the management and administration of the policy in 2008.

Mr R says regular annual bonuses on the policy stopped in 2001, but Mr R says he was told that the terminal bonus would compensate for the lack of annual bonuses. In August 2020 Phoenix wrote to Mr R in response to a query he had raised, it said:

I can confirm that the current terminal bonus on the policy is £2,043.71.

Mr R said:

The surrender value at that date [August 2020] was confirmed as £6,050.03 and the combined policy value as £6,722.25. In their annual statements they always stated they had surplus money to increase the final bonus up to and including January 2021 (sent out May 2021). Then in May 2022 they advised that although there was still surplus money, the final bonus for my policy was nil, and would remain so for the next 5 years...

Mr R complained to Phoenix. It didn't uphold his complaint. It explained how a with-profits fund worked and said it was satisfied that the surrender value Mr R had received fairly reflected the experience of policies with the same 'entry year' (1978) and 'maturity year'.

Mr R wasn't satisfied with the response he received from Phoenix and referred his complaint to this service.

Our investigator said she didn't think this service could uphold Mr R's complaint. She explained that the terminal bonus wasn't guaranteed and can change from year to year.

Mr R remained unhappy that the terminal bonus had been reduced to zero and said, '*... it seems incredible that the whole of the terminal bonus should have disappeared due to market fluctuations*'.

Mr R also provided this service with information he had gathered about the investment performance of the fund since 1978. He said he felt this information '*... suggests that the argument they make for declaring no regular bonuses from 2002 onwards when there were 2 years of negative growth is far outweighed by positive growth in other years, and refutes absolutely the claim that 'it became apparent that the returns earned in the 1980's and 1990's were not sustainable, and the fact that the terminal bonus was sustained until 2020 adds to this*'.

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 am sympathetic to Mr R's position, and I appreciate why he wants to better understand how *'...a policy that had been paid promptly since 1978, was supposedly with profits and with a company that had made profits over the lifetime of the policy could go from a value of £6,722.25 to £4,678.53 from May 2021 to May 2022... I understand that final bonuses are subject to market fluctuations, but to lose £2,000 in a profitable 12 months seems strange'*.

As Mr R is aware, his policy had a sum assured of £2,000 and this increased with the addition of annual bonuses, which once added couldn't be taken away (unless a market value adjustment was applied). However, there was no guarantee that a terminal bonus, would be paid on claim or surrender of his policy.

As Phoenix explained to Mr R, whether a terminal bonus is paid and if so, how much it is depends on how well the fund has performed over the whole time the investment has been in place.

The aim of a with-profits fund is that the investors receive a fair share of the profits of the fund, and the amount of any bonus is at the fund manager's discretion. This means that in good years, the fund manager can choose to keep some of the profits to help cover losses in bad years. This is often referred to as 'smoothing'.

Although bonuses are partly based on gains within the with-profits fund, it's important to bear in mind that a with-profits fund doesn't work in the same way as other investment funds. The amount of the bonus is **not** an equal proportion of the profits of the fund. Rather, the fund managers will consider the profit made within it and use smoothing to help ensure bonuses can be added in later years when markets may be underperforming.

The fund managers must also honour the guarantees that have to be met (such as accrued bonuses) when investments are cashed in. For these reasons, the performance of a with-profits fund doesn't necessarily reflect the current performance of the stock market, or the performance of the stock market over the life of the investment.

I do understand that this is not the decision Mr R was hoping for, but in the absence of anything to show that Phoenix has treated Mr R differently to other policy holders in his cohort, or provided a guarantee of the returns Mr R would receive, I can't reasonably find that it has breached the terms of his policy.

The decision not to pay a terminal bonus was a commercial decision that Phoenix was entitled to make. I can't reasonably find that Mr R should have received a terminal bonus as the way Phoenix's fund managers manage its investments and determine bonuses is a matter for its own commercial judgment.

That said, this service determines complaints on their individual merits. We do not have the power, or resources, to carry out audits or investigations, for example into the management or governance of a with-profits fund, or provider. That is the role of the industry regulator, the Financial Conduct Authority (FCA). If Mr R remains concerned that the decision not to pay a terminal bonus was unfair, or that annual bonuses should have been paid after 2001, he may wish to raise his concerns with the FCA.

My final decision

My decision is that, for the reasons I have set out above, I cannot uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 26 October 2023.

Suzannah Stuart
Ombudsman