

The complaint

Mr and Mrs C's complaint relates to a mortgage endowment policy they hold with Phoenix Life Limited. They are unhappy that they didn't receive correspondence from Phoenix about their policy, including the fact that it was transferred from the original provider to Phoenix and about the performance of the policy. This is because their address was not changed properly when they moved in 2007.

Although the events in this case span the time the policy was owned by the original provider and Phoenix, but for ease, I will refer to Phoenix throughout.

What happened

Mr and Mrs C took out their policy with the original provider in 1998. It is a unitised with-profits mortgage endowment policy with a target value of £70,000 and was set up with a term of 25 years. It is due to mature in September 2023.

From 2000 the industry Regulator required life assurance providers to update their mortgage endowment customers about the progress of their policies and the anticipated outcome at maturity. These letters were initially sent every two years, and then annually from 2005.

In 2006 Mr and Mrs C complained about the policy having been mis-sold due to the risks associated with it. The complaint was rejected as the documentation from the time of the sale showed that they had been willing to accept the risk that the policy might not produce sufficient to repay their mortgage.

Mr and Mrs C have told us they moved to their current address in 2007 and updated Phoenix. This appears to be the case, but it doesn't look like the address was updated on all of Phoenix's systems, as while an ad-hoc letter was sent to the correct address in 2011, others in 2009, 2010 and 2011 were sent to Mr and Mrs C's previous address. As the incorrectly addressed letters were returned, Phoenix stopped post being sent to Mr and Mrs C in 2011 in order to avoid a data breach.

It was not until early 2018, when Mr C called, that Phoenix was able to correct its mistake and update the address for Mr and Mrs C. Unfortunately, it made a further mistake and recorded the wrong house number and so when correspondence was sent, it was again returned to Phoenix. As such, it again stopped correspondence being sent out.

Mr C contacted Phoenix again in 2022 and it was established that the 2018 letter had been sent to an incorrect address. Unfortunately, the house number was again recorded incorrectly at that time. Mr and Mrs C have told us that the resident of the relevant property passed Phoenix's letters to them. The address was corrected following Mr C calling again about 10 days later.

A letter was sent to Mr C on 31 October 2022, to the correct address, which confirmed the maturity date, the amount of life cover provided and the then current surrender value. The surrender value was the amount Mr and Mrs C would have received if they'd cashed in the policy at that time. This was £49,854.10.

Enclosed with the letter was a copy of the annual performance review that had been created before Phoenix had the correct address on its records in June 2022. This detailed potential maturity values based on assumed growth rates. The values ranged from £66,636 and £70,236. It was explained that there was a significant risk the policy would not reach its target value.

Mr and Mrs C complained to Phoenix in November 2022. Phoenix provided its response on 2 March 2023. It set out what its records showed about the address issues and offered Mr and Mrs C £300 compensation for the problems in updating it. In relation to the fact that the policy was predicted to have a shortfall at maturity, it highlighted that Mr and Mrs C had been aware of the poorer than expected performance since 2000 and they'd been made aware of options available to them to deal with any shortfall.

Mr and Mrs C were not happy with Phoenix's response and asked the Financial Ombudsman Service to consider their complaint.

One of our Investigators considered the complaint, but she didn't recommend that it be upheld. She considered the offer Phoenix had made was reasonable for the administrative error it made. In relation to the shortfall on the policy, she was satisfied that Mr and Mrs C had been told regularly up to 2011 that there was a significant risk of their policy falling short of the target amount. As they hadn't done anything to address the shortfall up to that point, it didn't suggest they would have done anything differently if they had continued to receive further warnings about the policy falling short of its target.

Mr and Mrs C didn't accept the Investigator's view. They said that they didn't receive any letters from Phoenix before 2011. They also didn't accept that correspondence had been sent in 2018 and returned to Phoenix, as they were on good terms with the people who lived in the house number the letter had been addressed to, and those people would have passed on the letter if it had been received. Mr and Mrs C said they believe that Phoenix has lied about the correspondence that it said had been sent.

Our Investigator responded to Mr and Mrs C's comments, but she didn't change her conclusions. Mr and Mrs C remained dissatisfied and asked that the case be referred to an Ombudsman. They said that one of the reasons they referred their complaint to us was to see if they were alone in not receiving correspondence and said that if people stay silent then such issues never come to light and a business is allowed to mismanage, misrepresent and mistreat their customers.

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.

Before commenting on the details of the complaint I think it would be appropriate to explain that our service is independent and impartial; we do not represent the interests of businesses, nor are we consumer champions. What this means is that we don't represent either party, and we look at things independently without taking sides.

I understand our Investigator's findings were disappointing for Mr and Mrs C. It's the nature of what we do that we generally have to find in favour of one party or the other. Our findings are based on consideration of all the facts and all the submissions made by both parties.

Mr and Mrs C have expressed their thoughts on further investigations that we should undertake before the complaint is decided. As I have said above, we are impartial and so we also don't take either side's instructions on how we investigate a complaint, or when we have

enough information on file to decide it. In this case, given the information we have and the fact that the case turns on some quite basic facts, I am satisfied that the complaint can be decided fairly on the evidence available at this time.

It is clear that something went wrong with Phoenix's systems following Mr and Mrs C informing them that they'd moved. It would seem that their correct address was recorded somewhere on its systems and was accessible and used at times. However, the address that was used by the part of the system that created automated correspondence wasn't updated and continued to use their old address for several years after they moved. It was the latter issue that caused the problems, as when the automated correspondence was returned because it had been sent to an incorrect address, this meant that Phoenix stopped automated correspondence from being sent. This is a standard process within the financial services industry to avoid personal and policy information falling into the hands of people who have no right to that information.

Mr and Mrs C have highlighted the address on the June 2022 statement with a question mark. For clarity, Phoenix has explained to us the process for a 'gone away' policyholder, to stop further correspondence being sent, was for Phoenix to change the address to its own address. The address on the June 2022 letter was such an address.

I can understand that Mr and Mrs C think that Phoenix should have attempted to trace them when this happened. However, as it is a consumer's responsibility to provide such updates, it is not normal industry practice for traces to be done during the term of a policy, especially where the payments are continuing. It is likely that in the future, had the maturity value not been claimed Phoenix would have attempted to trace Mr and Mrs C, but they pre-empted that being needed by contacting Phoenix themselves. I can't uphold this complaint because Phoenix didn't attempt to trace Mr and Mrs C when it concluded it didn't have their correct address.

That said, Phoenix has accepted that something went wrong with it updating its systems with Mr and Mrs C's address following them moving and again in 2018 and 2022. It has offered £300 compensation for these administrative errors. This is in line with what I would expect to be offered in such circumstances and I haven't seen any evidence of inconvenience or upset that would merit a higher award.

When an error has been identified by a financial business, we look to see if it caused any financial loss or is likely to do so. In order to do this, we consider what situation a consumer would be in if the mistake had not been made. Mr and Mrs C have highlighted that this mistake meant they weren't told when their policy was transferred to Phoenix and were not kept up to date with its expected performance.

In relation to the latter point, we know that Mr and Mrs C received regular updates until 2007 and, based on the copy letters that have been provided to us, they also received an update in 2011. While I note that Mr and Mrs C have said they didn't receive any letters prior to 2011, we generally consider that if a letter is correctly addressed, then it is most likely delivered. Although Mr and Mrs C may not remember receiving the 2011 letter, given they had received many such letters by that point, it seems entirely plausible they might not remember that one specifically.

Mr and Mrs C complained about the risk associated with their policy prior to them moving. This clearly indicates that they were at that time aware that there was a risk the policy might not reach its target value. Indeed, they'd been told there was a significant risk of that occurring, which is the same message that was repeated in the 2011 letter. It was suggested that they look to take action to deal with the potential for a shortfall at maturity. I don't know whether Mr and Mrs C took any such action following their complaint being rejected, but if

they did, it didn't involve making changes to the policy or the amount they were paying toward it. If Mr and Mrs C didn't take any action prior to 2012 when they were still receiving information about the likely shortfall on the policy, it seems unlikely they would have done anything differently if they'd continued to receive the update letters. As such, I can't find that Phoenix's error has meant that Mr and Mrs C are in a different position at the present time than they would have been had the error not occurred.

As for the performance of their policy, as I have noted above, they have been aware from quite early in the term that it was not performing as had been expected when it was sold. This was a problem that the entire industry suffered from as the general situation of the financial markets deteriorated after their policy was arranged. I note that the predicted shortfalls at the time Mr and Mrs C were receiving correspondence were of the same order as those in 2022 when they started receiving information again.

Mr and Mrs C have encountered a further problem with the most recent statement sent to them, but that is not something I can comment on in this decision. Phoenix has been made aware of the problem and if Mr and Mrs C are unhappy with its response, they can raise a further complaint if they wish to do so.

My final decision

Phoenix Life Limited has already made an offer to pay £300 to settle this complaint and I think this offer is fair in all the circumstances. As such, my decision is that Phoenix Life Limited should pay Mr and Mrs C £300.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs C to accept or reject my decision before 11 September 2023.

Derry Baxter
Ombudsman