

The complaint

Mrs H, represented by Mr H, complains that Phoenix Life Limited failed to provide documents that she requested about a with profits policy and the poor return on the investment.

What happened

Mrs H and Mr E were the policyholders of a with profits policy that started on 24 April 1998 with their mother named as life assured. The policy paid out on the death of their mother in 2020.

On 11 November 2019 Mrs M wrote to Phoenix saying that she and Mr E were concerned about the extremely poor return on the investment and she requested all documentation that it had. As Mrs H's name and address didn't match the information Phoenix had in its records it didn't recognise the letter as being from her but treated the letter as a complaint.

There was some correspondence about this including a letter from Mrs H on 26 November 2019 explaining the use of her initials and that she wasn't making a complaint and a response from Phoenix dated 2 December 2019 stating the complaint had been withdrawn. There was a further letter dated 23 March 2020 in which she provided ID documents previously requested by Phoenix and asking again for the policy documents to be provided.

There was also some email correspondence from Phoenix to Mrs H in this period from the complaints department, which she didn't open as she didn't know who the sender was. This led to Phoenix offering her £30 for the worry caused from receiving emails from an unknown sender.

There was then ongoing communication between Mrs H (and Mr H) and Phoenix over the course of 2020 about the documents she wanted sight of. It treated her request as a Subject Access Request (SAR) and because of this provided limited documentation to her, most of which she had previously been aware of. She wrote to Phoenix on 19 January 2021 saying Phoenix were treating her with contempt, as she had made clear she wanted sight of all relevant documents for the policy.

Phoenix treated this as a complaint and sent a final response letter (FRL) on 25 February 2021 which Mrs H says she didn't receive. It sent a further FRL on 12 July 2021 saying the contents of the letter were a copy of the earlier letter. The July 2021 FRL explained that Phoenix couldn't disclose information about the policy or any third party and that under a SAR could only disclose personal information about her.

Mrs H referred the complaint to us following receipt of the FRL from Phoenix. There was thereafter correspondence between Mr H and us about the need for Mr E to be a party to the complaint for us to consider the complaint, on the basis that Phoenix had said he was the sole trustee of the policy. This ended with one of our investigators providing an opinion in which he said we would not be able to consider the complaint without Mr E's consent.

There was thereafter further correspondence between Mr H and the investigator about the

need for Mr E to be party to the complaint, with Mr H stating that Mr E wasn't the sole trustee.

Phoenix then wrote to the investigator on 10 November 2022 saying that it had just discovered that Mrs H should have been noted as a trustee on its systems and that she is entitled to receive all information about the policy. It subsequently offered £300 to Mrs H for the distress and inconvenience caused by its error.

Mr H referred to the offer as derisory but said that Mrs H would accept it as an 'interim payment'. The investigator informed Mr H that he thought the offer was fair and reasonable. Phoenix sent a cheque to Mrs H, although this was sent to the wrong address - that of Mr E. It also provided Mrs H with the documents relating to the policy that she had been seeking from it.

Mr H said that the investigator hadn't dealt with the other complaint issue, about the performance of the investment. The investigator explained that to deal with that complaint, he still needed the consent of the other trustee, Mr E.

The matter was referred to me for a decision and I issued a provisional partly upholding it, the findings from which are set out below.

"Given various comments made by Mr H and queries he has raised I think it would be helpful if I set out in simple terms the role of our service. We are an independent alternative dispute resolution service in the financial services sector to whom complainants can refer a complaint if they are dissatisfied with the response they have received from a business they have complained to.

On a complaint being referred to us we will consider its merits – subject to the complaint being one we are able to consider, which I discuss further below. If we think a complaint should be upheld then we can award redress to the complainant. This can include a financial award to put the complainant as far as possible back in the position they should have been in but for what a business did wrong, or an amount for such things as distress and inconvenience suffered by the complainant.

What we cannot do is impose a financial penalty or fine on a business for getting things wrong. This is quite different to an award of redress, which is for the benefit of the individual complainant.

I hope this helps clarify what our role is and what we can and cannot do when dealing with a complaint referred to us.

Turning to what this complaint is about, Mr H has said that it involves two issues, namely Phoenix's failure to provide documents requested by Mrs H – which documents have now been provided – and the poor performance of the investment.

The documents issue

I have briefly set out the timeline of Mrs H's attempt to obtain all relevant documents for the policy in the background above. She first requested the documents in November 2019. Her name and address didn't match the record that Phoenix had for her but this was clarified within a short time and her new address was recorded by Phoenix.

Thereafter the matter became protracted, partly because Phoenix had changed its work practices due to the Covid pandemic. This led to its staff working remotely and communicating by email, which on occasion meant Mrs H received emails from an unknown

sender which she was understandably reluctant to open.

However, I think the main cause for her request for documents becoming protracted was because Phoenix mistakenly believed that she wasn't entitled to the documents she had asked for - because she wasn't recorded as a trustee on its systems, as she should have been.

This led to Phoenix wrongly assuming she wasn't entitled to the documents requested and treating her request as a SAR and providing her with documents which – as she pointed out – she already had. I think matters were made more confusing for Mrs H because I don't think Phoenix clearly explained why she wasn't entitled to see all the documents she had requested.

Phoenix continued to maintain that it had done nothing wrong long after the complaint was referred to our service. It was only in the course of dealing with a request for clarification from the investigator as to what documents Mrs H was entitled to see that Phoenix identified that it hadn't recorded her as a trustee originally, when it should have done.

The delay in providing the documents and the necessity for Mrs H to keep on chasing for these and being told more than once she wasn't entitled to see anything other than her personal information undoubtedly caused no small amount of distress and inconvenience to Mrs H over a prolonged period of time – around two years. This is something that Phoenix acknowledges, offering £300 to Mrs H for this.

I am not satisfied that this amount reflects the distress and inconvenience caused by it wrongly refusing to release documents to Mrs H over such a protracted period. The frustration that Mrs H felt resulting from her not being provided with documents she believed – rightly – that she was entitled to see comes across clearly in the various communications from her.

I have also taken into account that in the process of paying Mrs H the £300 that it thought was a reasonable amount for distress and inconvenience Phoenix sent the cheque to the wrong address – that of Mr E. I have seen nothing that makes me think this was a deliberate act on its part, as Mr H has intimated. I think it far more likely that this was an administrative error. However, given Mr H has indicated that Mrs H and Mr E are estranged, I think some additional distress and inconvenience likely resulted from this error.

In the circumstances I think an overall award of £500 for distress and inconvenience is fair and reasonable.

The poor performance issue

When a complaint is referred to us we need to consider whether we have jurisdiction to consider the complaint and if we then decide that we do have jurisdiction, whether we should consider the complaint in any event. The rules in relation to this are set out in the Dispute Resolution rules (DISP) in the Handbook of the industry regulator, the Financial Conduct Authority.

In terms of our jurisdiction DISP 2.8.1R states, amongst other things, that we can only consider a complaint where the business to whom the complaint has been made has sent a final response or eight weeks has elapsed since the complaint was received by the business.

Mrs H did refer to poor performance in her original letter of 11 November 2019, but when Phoenix said it was treating the letter as a complaint she responded and explicitly stated that

she wasn't raising a complaint which resulted in Phoenix confirming on 2 December 2019 that the complaint had been withdrawn. So, Phoenix has consequently not investigated that complaint or provided an FRL in respect of it.

The performance issue was only raised again by Mrs H when she contacted us following receipt of the FRL from Phoenix of July 2021 – which FRL only dealt with the documents issue. In the circumstances I am not satisfied that we currently have jurisdiction to consider the complaint, as it has not been made to Phoenix first. It needs to be given the opportunity of investigating the complaint about poor performance and providing its final response to this (or fail to provide the response within eight weeks) before we can consider the complaint.

Even if I am wrong about that, and the complaint made to Phoenix in the letter of 11 November 2019 or some later communication did trigger the start of the eight week period for providing a final response such that this issue is within our jurisdiction, I would still need to consider whether we should consider it - as there are circumstances where it is appropriate to dismiss a complaint that is referred to us that is within our jurisdiction.

The rules about dismissing a complaint are set out in DISP 3.3. The grounds for dismissal are set out under DISP 3.3.4AR - which sets out five grounds for dismissal, the last of which is that:

“(5) dealing with such a type of complaint would otherwise seriously impair the effective operation of the Financial Ombudsman Service.”

There are then examples set out in DISP 3.3.4BG of the type of complaint that may fall within this ground - one of which is where the complaint involves, or might involve, more than one eligible complainant and has been referred without the consent of the other eligible complainant/s.

Both Mrs H and Mr E are trustees and as such eligible complainants but Mr E hasn't consented to a complaint about poor performance being referred to us. So, this complaint falls squarely within the example provided as to what might amount to a complaint that would otherwise seriously impair our effective operation and as such would justify dismissing it.

The power to dismiss a complaint is discretionary and there may be circumstances where I consider that the fact not all eligible complainants are party to the complaint isn't a reason to dismiss. However, I am not persuaded this is such a case. I am satisfied in the circumstances of this case that if we have jurisdiction to consider the complaint about poor performance I should in any event dismiss it - not least because Mr H has suggested that Mrs H and Mr E have fallen out and he may well not agree with her about the complaint.

I would make one further point in relation to the complaint about poor performance, as it is possible that Mr E may subsequently consent to a complaint being referred to us on that issue. Generally we do not consider complaints that are only about performance of an investment, as a business can't be held responsible for what the markets do.

I appreciate that Mrs H will feel very disappointed that the complaint about performance is one I don't think we currently can consider - or one that we should consider in any event, even if we do have jurisdiction. However, I must comply with the rules that govern us and apply any discretionary power afforded to me reasonably.”

I gave both parties the opportunity of responding to my complaint and providing any further information they wanted me to consider before issuing my final decision.

Phoenix responded and said that it agreed with my provisional decision. Mr H responded on

behalf of Mrs H and acknowledged that I was unable to look into the issue about performance. Regarding the issue about the failure of Phoenix to provide documents to Mrs H when it should have done he said the award of £500 I had made was an insult.

Mr H said that I had implied that Phoenix had an excuse for not sending the documents because staff were working from home and then set out why he disagreed this was a reason for documents not to be sent. He said after the initial confusion over Mrs H's initials was cleared up even a cursory glance at the policy would have established Mrs H as a trustee and entitlement to the documents. He said instead Phoenix continued to deny Mrs H was entitled to the documents, even after our involvement, for three years and yet I didn't see that as grounds for reasonable compensation.

Mr H pointed out that of the 17 letters sent by Mrs H only four were replied to by the same person which he says was an example of how seriously Phoenix were taking matters. He said I can't put Mrs H back in the position she should be in as I can't bring back the many hours she has wasted over nearly four years but what I can do is award proper and reasonable compensation. He said that the award I had made in my provisional decision isn't a punishment, deterrent or reasonable compensation and is unlikely to change Phoenix's working practices in the future.

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 sorry to hear of the deterioration in the health of Mrs H and the conclusion of this case is hopefully one less thing for her (and Mr H) to concern themselves with.

I have noted everything that Mr H has said on behalf of Mrs H in relation to my provisional decision. He hasn't said anything that would lead me to change the findings in my provisional decision which I stand by.

The main issue Mr H has raised in response to my provisional decision is about the redress I have awarded. However, I am not persuaded the award I have made was unfair or unreasonable in the circumstances. I note that he has interpreted the award as being £500 in addition to the £300 already paid by Phoenix but I said I was awarding £500 overall, by which I meant this included the £300 already paid to Mrs H.

Mr H has referred to me implying that Phoenix had an excuse for not sending the documents because staff were working from home. However, I made clear that I thought the main reason for the failure on the part of Phoenix to send the documents Mrs H was entitled to see was because it hadn't recorded her as a trustee, as it should have done.

Mr H has referred to the award not being a punishment and that it is unlikely to change Phoenix's working practices. I explained in my provisional decision that we are not the regulator. It isn't part of our function to punish a business and the awards we make are to compensate the complainant. I have no power to make an award that is a punishment or deterrent.

Mr H has also argued that the award I have made isn't fair or reasonable and in some way has contributed to Mrs H's distress. It is certainly not my intention to increase Mrs H's distress by making the award that I have and I am sorry if that has been the effect of my award.

However, I am not persuaded that what I have awarded isn't fair and reasonable in the

circumstances. I acknowledge that Phoenix's insistence that Mrs H wasn't entitled to see documents it should have provided to her was protracted. This undoubtedly caused no small amount of frustration.

I also acknowledge that the 17 letters Mr H refers to Mrs H having written and consideration of the responses to those letters would have taken up several hours of Mrs H's time, but this isn't a case where she was on the phone regularly or writing every couple of weeks.

The award I have made takes account of the protracted nature of the wrongdoing by Phoenix and the frustration this will have caused over the period in question allowing for the level of contact that there was between Mrs H and Phoenix about the documents.

I am upholding this complaint because Phoenix didn't provide Mrs H with the documents about the policy she asked for as it wrongly believed she wasn't entitled to these. I am satisfied that the award of £500 for distress and inconvenience to include the £300 already paid by Phoenix is fair and reasonable in the circumstances. I appreciate that this will be disappointing to Mrs H (and Mr H) but I am not persuaded that I should increase that award.

Putting things right

Phoenix must pay Mrs H £500 overall for the distress and inconvenience caused by its failure to provide her with the documents she was entitled to see, to include the £300 it has already paid.

My final decision

I uphold the complaint to the extent set out. Phoenix Life Limited must pay Mrs H the redress I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 30 October 2023.

Philip Gibbons
Ombudsman