DRN-4599249

The complaint

Mr W complains that after making a critical illness claim under his whole of life (WOL) protection policy, Phoenix Life Limited failed to pay him the value of the investment fund which had accrued within the plan.

Mr W would now like Phoenix to pay him the £10,000 fund that he says he had built up over the last 23 years.

What happened

In July 2000, Mr W, who was 51 years old at the time and an Independent Financial Adviser (IFA), took out a Self Assurance Lifetime plan. The unit-linked WOL protection plan was designed to pay out a lump sum to Mr W in the event of either his death, or on diagnosis of one of the named critical illnesses covered on the plan.

In May 2022, Mr W received a letter from Phoenix, explaining that they had reviewed the cost of providing his cover. They explained that following a review of his portfolio, his premiums were sufficient to pay for his current level of protection benefits until the next scheduled review date in July 2025. Phoenix also explained that this meant there wasn't a change needed to either his premiums or the benefits provided under the plan at that time. The letter also went on to state that Mr W's plan had built up a 'unit value' of £10,238.

In September 2022, Mr W made a successful critical illness claim under the policy which, at the same time, brought the plan to an end and no further premiums were paid. Following the claim, Mr W approached Phoenix on a number of occasions questioning why, in addition to the sum assured of £21,000, he had also not received the value of the units that he had accrued within the policy.

After not receiving a satisfactory response to his queries Mr W decided to complain to Phoenix. In summary, he said he was unhappy they had not returned the £10,000 fund that he'd built up within the plan, going on to explain that he considered that fund an additional element to his plan rather than a fund that Phoenix could use to pay his critical illness benefits from.

After reviewing Mr W's complaint, Phoenix explained that his policy didn't entitle him to a further payment. They also explained that the plan was designed primarily to provide life and critical illness cover and that had he wanted to encash the surrender value that had accumulated within the plan, he would've needed to have done so prior to making his critical illness claim. However, they explained that in doing so, that would've meant his plan would have ended at that point, and he wouldn't have been able to claim on the plan for his critical illness.

Phoenix recognised that Mr W had telephoned them a number of times following the critical illness claim to enquire about encashing the £10,000 and on each occasion, he was told that their back-office team would look into things for him. Phoenix say their helpline should've

explained that there wasn't any further monies and in recognition of not managing his expectations better, they offered him £100 for the confusion and trouble that they had caused and also paid him £100 for the delay in responding to his complaint.

Mr W was unhappy with Phoenix's response and offer, so he asked this service to look at his complaint. The complaint was then considered by one of our Investigators. After carefully considering the terms and conditions of Mr W's policy, she concluded that Phoenix had treated him fairly and he was only entitled to receive the greater of the sum assured (which in this case was £21,000) or the value of the units within the plan, but not both. She also felt that Phoenix's offer of £200 overall compensation for the customer service failings that he'd experienced was fair.

Mr W, however, disagreed with our Investigator's findings. In summary, he said that Phoenix had set the premiums on his plan based upon their actuarial knowledge and claims experience. He went on to say that he didn't think Phoenix were treating their consumers fairly because they should have reduced the premiums on the plan or calculated them more accurately.

Our Investigator was not persuaded to change her view as she didn't believe that Mr W had presented any new arguments she'd not already considered or responded to. Unhappy with that outcome, Mr W then asked the Investigator to pass the case to an Ombudsman for a 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.

I have summarised this complaint in less detail than Mr W has done and I've done so using my own words. The purpose of my decision isn't to address every single point raised by all of the parties involved. If there's something I've not mentioned, it isn't because I've ignored it - I haven't. I'm satisfied that I don't need to comment on every individual argument to be able to reach what I think is the right outcome. No discourtesy is intended by this; our rules allow me to do this and it simply reflects the informal nature of our service as a free alternative to the courts. Instead, I will focus on what I find to be the key issue here, which is whether Mr W is entitled to the surrender value of the of the policy in addition to the sum assured.

And, having done so, whilst I'm upholding Mr W's complaint, I won't be instructing Phoenix to take any further action beyond what they've already proposed. Whilst I appreciate that Mr W will be disappointed with that decision, I'll explain why below.

Mr W's policy was a unit-linked WOL plan, the primary objective of it (according to the key features brochure) was to "*give you the opportunity of providing financial protection, should any of the events that you have covered yourself against, happen to you, at any time in your life*". The events that Mr W then chose to protect himself against (according to the application form that he completed at the time) were death or an earlier critical illness. Part of Mr W's premium went towards covering the cost of his life and critical illness cover with the remainder of the monies invested being split equally between an adventurous and a managed fund – the purpose of this investment element of the premium was to support the cost of the cover as Mr W's age increased, and therefore the cost of the cover would be higher. Rather than being fixed at outset, the cost of providing Mr W's protection was reviewable; this meant that Phoenix would review the cost of providing that cover at set

intervals, and if necessary, the cost of the cover could change – the need for this would depend on the performance of the investment element. This structure is common within whole of life policies, and in his role as an IFA, Mr W could reasonably be expected to understand it.

From letters that I've seen within the file, Phoenix reviewed Mr W's portfolio every three years on a default basis. That meant they reviewed his investment portfolio on each of those occasions to ensure that his contributions were sufficient to provide the plan's level of protection that he had chosen.

To help lessen the likelihood of having to alter the cover in the later years of the policy, the monies that were invested (after the protection and policy costs had been paid for) would then be used in future years to reduce the impact of any protection price increases, when the consumer is older and the cover typically costs more. So, whilst there is a separate 'pot' of money running alongside the cover, those funds aren't primarily designed as an additional savings scheme to top up any existing cover. And, having looked very closely at the policy provisions of Mr W's policy, I think that becomes clear when looking at page four, section six:

"The amount payable on the occurrence of the relevant event will be equal to the greater of:

a) *The total of any of the following for which an amount is shown in the policy schedule as applicable on the claim date:*

    i) *critical cover; and*

    ii) *combined cover*

and

b) *ii) in any other case, a sum being the value of the unit allocated to the policy, calculated at the bid price applying on the claim date".*

I'm satisfied that this provision makes clear that Mr W is entitled to only the greater of the sum assured or the unit value of the policy, but not both. It is entirely possible, in certain circumstances, that plan holders could see occasions where the value of the units in the policy exceed the sum assured on the plan and in that instance, they would receive that value. However, in Mr W's circumstances, as his sum assured was set at £21,000 and the value of his units were £10,000, Phoenix paid the greater of the two, which was the sum assured.

And, I also think that the key features brochure makes it clear that the unit value within the plan isn't something that should be considered as a separate standalone pot. It explains that: "*You can cash-in your policy whenever you like. You should remember that the amount you get back, if any, is likely to be very small. This is because the main aim of Self Assurance Lifetime is to provide you with a high level of protection. Your cover will stop immediately once you cash in your policy*". So, I think it's made clear to plan holders that if the unit value is taken, their plan, and more specifically, their cover, will come to an end.

Phoenix sent Mr W a statement in July 2022 that provided an update on how his plan was doing and explained the investment value of his portfolio at that point was £10,123.87.

On page three of the statement, under the 'critical illness benefit' section, it states: "*We will pay this amount if the life assured is diagnosed with a terminal illness or medical condition covered by your portfolio. We will pay out when the claim has been accepted. If, when a*

claim is made, your investment holding (including any final bonus) is higher, we will pay the higher amount. Once a claim is made the portfolio and any benefits will end". Similar wording is also used to describe the death benefits. I think this wording makes clear that in the event of a successful claim, Phoenix will only pay the greater of the sum assured or the unit value, whichever is higher, but not both. The only time that Mr W would be entitled to the value of the units is if he were to have cancelled the plan prior to a successful life or critical illness claim being made, or if the value of the units were higher than the sum assured when a successful claim is made. As well as the policy provisions, this is also set out in section four of the Self Assurance plan's 'Technical Guide' document, so it seems to me that Phoenix have made clear in multiple documents what Mr W is entitled to, and when.

So, despite what Mr W may think, the plan is not designed as a savings policy; its primary function is a protection plan that provides life and critical illness benefits. So, I don't think that Phoenix have treated him unfairly because the plan has provided the benefits that were clearly explained in Phoenix's literature.

Phoenix have acknowledged that Mr W telephoned them on a number of occasions following his critical illness claim to enquire about the availability of the unit value of the policy and on each occasion, he was told that their back-office team would look into things for him. Phoenix say their helpline should've explained that there wasn't any further monies and in recognition of not managing his expectations better, they offered him £100 for the confusion and trouble that they had caused. Taking account of those lost earlier opportunities that Phoenix had to better manage Mr W's expectations, I think the £100 is fair and reasonable in the circumstances and is in line with what I would have awarded had they not already decided to do so.

In addition to this, Phoenix's final resolution letter of 27 June 2023 states that they have already paid Mr W £100 for the delay in responding to his complaint.

My final decision

For the reasons I've given above, I partly uphold Mr W's complaint. Phoenix Life Limited has already agreed to pay Mr W £100 to reflect their poor service, on top of the separate £100 that they've already issued him to settle the complaint, making a total of £200. I think this offer is fair and reasonable in the circumstances.

So, my decision is that Phoenix Life Limited should pay the outstanding Mr W £100 if they have not already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 26 March 2024.

Simon Fox
Ombudsman