

The complaint

Mr P complains that Phoenix Life Limited (*'Phoenix'*) has paid out an insufficient surrender value for his with profits investment policy. To resolve his complaint, Mr P wants to be paid £4,000 which includes the £3,395.44 difference in value between the surrender value he received in January 2023 and the projected settlement value issued in November 2022.

What happened

Mr P took out a Scottish Mutual Selected Period Investment Plan in 1982, with a 41-year term. It had regular monthly contributions and a had a sum assured of £7,872 - the minimum that would be paid at maturity. The policy has since been taken over by Phoenix.

On 11 November 2022, Phoenix told Mr P's appointed financial adviser that the estimated payment upon maturity in January 2023 was £46,753.68.

On 11 January 2023, Phoenix told Mr P that £43,358.24 had been paid to him as full surrender value. It said that the value comprised the policy's sum assured of £7,872, an annual bonus of £18,247.44 and a final bonus of £17,238.80.

Later that month and in early February 2023, Mr P called Phoenix. He asked it to explain the discrepancy between the projected and the actual surrender values. Mr P says it could not give any reason for the reduction, other than confirming that the final bonus was affected.

On 6 March 2023, Phoenix sent Mr P a letter regarding the surrender value. It explained in detail how Mr P's policy worked. It said that at maturity - provided premiums were paid for the full term - the amount payable would be the sum assured plus any annual bonuses that the policy has accrued. A final bonus may be added, but this bonus was not guaranteed and was paid at whichever rates were applicable at the time of surrender.

Phoenix went on to explain how the with profits fund worked for Mr P's policy. It told Mr P that it was a carefully managed fund which provided reasonably secure investments in equities, fixed interests, securities and property. How well that fund performed affected the level of bonuses that were paid. Funds of this nature were smoothed to reduce some of the effects of the rise and fall of asset values, unlike unit linked funds.

Phoenix said that it aimed to pay all policyholders their fair share of the 'profits' earned by the fund over the time they have held their investment. When deciding what that fair share of the profits comprised, it would consider the build-up of premiums, or 'asset share'. The addition of final bonuses helped it to target the asset share. When setting bonuses, specimen policies were chosen that represented of all the policies that commenced in each calendar year. Asset shares were calculated for each specimen policy, taking into account:

- the premiums paid in;
- the fund's investment performance;
- Phoenix's running costs, which included its administration costs, investment costs and commission;
- any tax it had to pay;

- the shareholders' share of profits;
- charges for death benefits and other guaranteed benefits; and
- any distribution of surplus money.

If, having made this consideration, the asset share was larger than the value of the sum assured and any annual bonuses already added to the specimen policy, Phoenix would add a final bonus; this was so that the sum assured and the annual bonuses already added plus the final bonus equalled the asset share for the specimen policy. If the asset share was smaller than the value of the guaranteed benefits, no final bonus would be added.

Mr P complained. He did not feel the information in its letter was helpful as to his specific situation. He said Phoenix ought to provide a coherent explanation as to why his investment's surrender value had fallen so considerably, when this had not been the case in the stock market.

On 28 April 2023, Phoenix rejected the complaint. Regarding the settlement value for the investment, Phoenix said that the reductions in final bonus rates were due to challenging economic conditions and negative investment returns.

Due to the stated challenging conditions, Phoenix expected an average change in total payout of -7% for investments of a similar age to Mr P's. As it could not decrease the guaranteed benefits, a 17% reduction was taken from the final bonus to provide an overall weighted 7% reduction on the surrender value.

Phoenix did sympathise with Mr P's concerns that its previous letter hadn't properly explained why his surrender value was lower than expected. To that end, it offered to pay him £200 for the upset he had been caused, along with £10 towards the calls he had made.

Mr P still disagreed and he brought his complaint to this service. He explained that he did not wish to accept Phoenix's offer, and he was only prepared to settle the matter for £4,000.

Phoenix reiterated that the value had been checked by its actuarial team and was correct. A terminal bonus was never guaranteed; it could be altered or withdrawn at any time.

An investigator from this service reviewed the complaint. His view was that Phoenix had behaved fairly in the circumstances. The investigator noted that Phoenix had set out why its terminal bonus had reduced, affecting the value paid to Mr P in January 2023. He felt Phoenix had given clear reasons in its explanation to Mr P and paid him reasonable compensation. He didn't think it ought to do anything further to resolve the complaint.

Phoenix accepted the investigator's view on the complaint. However, Mr P disagreed. He said he wanted his complaint to be referred to an ombudsman. Mr P made some further written submissions, noting in summary:

- Though it was set out by the investigator that Phoenix had paid him £210, that wasn't correct.
- Mr P had been offered the compensation, but he rejected it before the complaint was referred to this service.
- The explanation given by Phoenix suggested that the guaranteed elements of the policy were invested in volatile, higher risk, investments even as the policy approached maturity.
- If Phoenix did that, then it must follow that it has a cavalier investment strategy.
- He takes the view that Phoenix's explanation is very light on numbers and actual evidence to back up its assertions.

- In fact, all it has done is provide a list of information that gives an explanation as to the factors affecting the lower value, but these give no tangible information such that the discrepancy can be properly explained.
- Phoenix must have had very good idea in November 2022 of the supposedly poor performance for the period March to August 2022, so this does not explain the fall between November 2022 and January 2023.
- The wider FTSE 100 index remained flat over the reference period from March to August 2022.
- He finds it shocking that Phoenix is allowed to get away with behaving in such an opaque manner.
- For the avoidance of doubt, he rejects the £210 compensation.

Mr P thereafter asked for some additional time to make further comments that he wanted considered by an ombudsman. He submitted that:

- The unhelpful approach taken by Phoenix in its final response letter to the complaint was not a proper answer. Instead it merely provided a list of supposed possible factors that affected the policy's final value upon surrender.
- He considers the factors are irrelevant anyhow.
- He questions if it has been taken into account that Phoenix has undertaken a risky approach with his investment towards maturity.
- As he previously set out, the FTSE 100 performance was neutral over the relevant period across nearly all asset classes, so he questions the downturn that Phoenix has relied upon.
- Phoenix has incorrect complaint information on the Financial Conduct Authority's website – he would like this service to follow that up with Phoenix or the FCA.

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.

Having considered everything carefully, I have reached the same outcome as our investigator. That means I won't be able to uphold the complaint in the way Mr P has asked for, or direct Phoenix to make up the policy's surrender value to the projection issued in November 2022. I'll explain my reasons for reaching this decision below.

I've included a summary of the chronology of the complaint in the 'what happened' section of this decision, including the various submissions made by the parties – primarily Mr P. However, this decision will not address every individual submission he has made in turn.

This service's role is to investigate disputes and resolve complaints informally, whilst taking into account relevant laws, regulations and best practice. In reaching my decision, I'll focus on the issues I believe to be central to the complaint to decide what I think is fair and reasonable in all of the circumstances. We are not a court; and though there are rules I may rely on in respect of complaint handling procedures, I am not required to comment on each point or make specific determinations on every submission put forward by the parties.

It's also important for me to point out that we do not act in the capacity of a regulator. That means our decisions don't ordinarily interfere in how a business may conduct its operations or exercise what may be commercial judgement on the provision of a particular service. That remit falls to the FCA.

I note the regulator's function here because the crux of this complaint relates to how Phoenix

has operated; specifically how it determined final or terminal bonuses for with profits policies such as Mr P's. However, though Mr P may believe otherwise, it is not my role to determine how Phoenix applies bonuses or command it to operate differently. Instead, I have looked at whether it has treated Mr P fairly in relation to the provision of information about its decision regarding the final bonus applying to the investment. And I believe it has.

Mr P's policy had a sum assured that increased with the addition of annual bonuses; once added, these bonuses couldn't be taken away unless a market value adjustment was applied. However, there was no guarantee that a terminal bonus would be paid upon either a claim being made or at the date of surrender.

To that end, the letter of 11 November 2022 sets out how *"the estimated amount payable on that date will be £46,753.68 (gross). The actual amount payable will be calculated as at the maturity date and may be higher or lower than the figure quoted"*.

I am satisfied that Phoenix explained to Mr P that where a terminal/final bonus is paid, it will depend on a number of factors based on how well the fund has performed over the life of the investment.

To explain for Mr P, a with profits fund seeks to ensure all investors receive a fair share of the profits of the fund, with the amount of any bonus being at the fund manager's discretion. In years with good performance, the fund manager can retain some of the profits to help cover losses in underperforming years. This is often referred to as 'smoothing'.

It is also important to note 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 manager 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. Fund managers must also honour any guarantees that have to be met, for example, accrued bonuses, when investments are cashed in.

For these reasons, the performance of a with profits fund may not necessarily reflect the current performance of the stock market, or the performance of the stock market over the life of the investment. And though Mr P feels that the overall returns in the stock market for the period referred to by Phoenix in 2022 is not proportionate to the reduced final bonus, I am persuaded that Phoenix has made reasonable endeavours to explain its reasoning to Mr P.

Phoenix's actuaries have told us how its fund managers undertake a review of the terminal bonus rates twice a year on 1 January and 1 July. In Mr P's case, the change in the investment returns used between the July 2022 and January 2023 bonus rate setting periods was negative and the estate value also dropped. This had a cumulative negative impact on the overall asset share of the policy, and accordingly accounted for the reduced bonus.

Overall, I have not seen any objective evidence which leads me to conclude that Phoenix has acted contrary to the policy terms or treated Mr P differently to other policyholders with maturing with profits policies in the same group. Nor do I consider the estimated surrender value provided in November 2022 gave any guarantee of the return Mr P would receive in respect of a final bonus.

I know Mr P feels that we ought to be able to hold Phoenix to precise account for its actuarial calculations of the final/terminal bonus. However, the decision to pay a reduced bonus was a commercial decision that Phoenix was entitled to make. I can't reasonably direct that Mr P should receive a higher bonus. This service determines complaints on their individual merits. We do not have authority to carry out investigations into the management or governance of a with-profits fund. As I have set out above, it is the FCA that acts in the capacity of regulator.

Finally, I note that though it rejected the complaint, Phoenix has already made an offer to pay £210 to account for the upset Mr P has suffered following its communication about the policy, including the time he took making calls to resolve his concerns. Though I am pleased to note Phoenix has made this offer, I do not believe it has acted unfairly or unreasonably in relation to the information it has provided Mr P about his policy or the final bonus. Mr P should otherwise contact Phoenix directly if he now wishes to accept the offer.

My final decision

I do not believe Phoenix Life Limited needs to do anything to resolve this complaint. I am therefore unable to uphold it or make any award to Mr P.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 9 July 2024.

Jo Storey
Ombudsman