DRN-4868926

The complaint

Ms R complains about the amount she received from Phoenix Life Limited (Phoenix) for her endowment plan when she surrendered it in March 2023.

Ms R complains that the value of her plan started to fall after she enquired about cashing in the plan in 2022. She says that the fall in value was due to mismanagement by Phoenix.

What happened

Ms R took out an early option mortgage (endowment) plan which was due to mature in December 2023. She paid a monthly premium into the plan.

In 2018 she received her annual bonus statement for the year 2017. The value of the total policy benefits for her plan in that statement was £30,941.

Ms R then made several requests to Phoenix over the following years, asking for the surrender value of her plan.

In 2019 Phoenix provided Ms R with the surrender value for her plan which was £50,981.

In November 2020 the surrender value was £52,228.

In May 2021 the surrender value was £58,092.

In January 2022 the surrender value was £63,034.

In the middle of March 2022 the surrender value was £63,518.

At the end of March 2022 Ms R asked for a cash-in quotation. The cash-in value at that time was £62,042.

In July 2022 Ms R asked for another cash-in quotation. The cash-in value at that time was £60,597.

In September 2022 Ms R made a request for information in relation to her plan. The surrender value as at that date was £60,811.

In February 2023 the surrender value was £59,531.

Ms R has explained that she didn’t want to encash her plan but needed to do so because of her financial circumstances.

Ms R gave instructions to encash the plan and in March 2023, Phoenix paid Ms R the surrender value of £59,447.

Shortly after, Ms R complained to Phoenix that the value of her plan had decreased since she had asked for a cash-in value. Ms R was unhappy with the amount she received when she surrendered her plan, which was less than the surrender values she had previously been given.

Phoenix didn’t uphold her complaint about the value of her plan. It said Ms R’s complaint was, in effect, about the performance of her plan, which wasn’t guaranteed.

Phoenix said the basic sum assured on her plan, and the annual bonuses once added, were guaranteed but the terminal bonus wasn't guaranteed, and was dependant on investment conditions.

Phoenix also said it wouldn't guarantee a value until it had received all of the required documentation and confirmation that it could proceed with the surrender of the plan.

Phoenix acknowledged that it had taken too long to respond to Ms R's complaint. It apologised for the delay and offered to pay £150 for the inconvenience caused. It subsequently wrote to Ms R and acknowledged its original offer for the delay was insufficient as it had mistaken the time period of the delay. So it offered a further £250 in respect of the trouble and upset it had caused Ms R as a result of its error, and the delay in responding to her complaint.

Ms R didn't agree with Phoenix's conclusions and referred her complaint to our service.

Our investigator considered the complaint but didn't think it should be upheld. He set out the details of the plan and explained that the final payment was comprised of a sum assured, annual bonuses and a terminal bonus. He noted that only the first two elements were guaranteed but the terminal bonus was discretionary and subject to fluctuation.

The investigator said this was why the amount Ms R received from Phoenix in 2023 was different to the amounts in the earlier quotes in 2022.

The investigator explained that the terminal bonus was added at the surrender of the policy and was based on how well the fund had performed over the whole time the investment had been in place. He said whether a terminal bonus was paid, and the amount paid, was a commercial decision taken by Phoenix.

The investigator said that he appreciated the delay by Phoenix in answering Ms R's complaint would have caused her some distress. He noted that Phoenix had acknowledged the delay and apologised and had offered Ms R compensation for its complaint handling which the investigator thought was fair and reasonable.

Ms R didn't think that the investigator had addressed her complaint. She reiterated her complaint was about the drop in the value of her plan from the point when she asked for cash-in quotations.

Ms R said the fund manager should take action to prevent decreases in value and she said she felt it was strange that the value of her plan decreased when the markets were going up. Ms R said she wanted some explanation as to why that was the case.

As no agreement could be reached Ms R's complaint was referred to me for review.

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.

Ms R took out a with-profits endowment plan. The way these plans work is that they have a basic sum assured which is the guaranteed sum and bonuses are added each year. Once annual bonuses are added they cannot be taken away, although an annual bonus is not guaranteed, it depends on the performance of the fund.

The less certain aspect of the value of the plan is the terminal bonus. That is a bonus that is paid when you surrender your plan and leave the with-profits fund.

Whether a terminal bonus is paid and how much it is, depends on how well the fund does over the whole time the investment has been in place.

So the amount of terminal bonus you receive will depend on <u>when</u> you surrender your plan and the investment performance up to that point. Periods of poor market performance in the years the plan was invested are it is more likely than not, to impact the amount of terminal bonus the plan holder receives.

The idea behind the terminal bonus is that a fair share of the fund is paid out to the plan holder which relates to the period their premiums were invested in that fund and investment performance over that period. So, the aim is to treat all plan holders fairly.

I can see that Ms R asked for valuations for her plan on several occasions between 2018 and 2023. Her annual bonus statement for 2017 (sent in 2018) indicated the value of the total benefits for her plan was £30,941, which was made up of the sum assured and the declared annual bonuses.

It explained that:

"The amount payable at maturity will be the total policy benefits plus any final bonus applied at that time. Please remember that the value of your final bonus can go down as well as up

If you take your benefits early, stop paying or reduce contributions to your policy the total benefit will be less than shown in the table above."

In September 2019 Ms R was provided with a surrender value for her plan. This included the terminal bonus payable at that time, and the value was £50,981. So clearly, bearing in mind the statement value for 2017, the amount of terminal bonus had a significant impact on the surrender value.

I also note the correspondence providing the surrender value included the following wording:

"*The value is based on the calculation table we currently use for surrenders and is not guaranteed."*

Over the subsequent period the surrender values quoted to Ms R by Phoenix increased. On 18 March 2022, the surrender value was £63,518. Again the documentation indicated that:

"*The value is based on the calculation table we currently use for surrenders and is not guaranteed*."

Ms R asked for a cash-in value from Phoenix and at the end of March 2022, it gave her a cash-in quotation of £62,042. That quote gave the following warning:

"*The cash-in value shown is not guaranteed. The actual amount payable will be recalculated when we receive all completed documents, as required and it may be higher or lower than the figure quoted*."

Ms R decided not to encash her plan at that point and asked for another quote.

Ms R was provided with another cash-in quotation in July 2022 with the same warning. The value was lower than in March 2022 at £60,597.

In September 2022, following a request for policy information, Phoenix quoted a surrender value of £60,811 as at that date. The document stated ""*Please be advised that the surrender value quoted above is not guaranteed and will be recalculated in the event of a claim*." And then in February 2023, the surrender value quoted was lower again, at £59,531.

Ms R feels that her plan was mismanaged by Phoenix and notes that the value of her plan decreased once she enquired about cashing it in. So, in effect, she says those things are related. Ms R also questions the decrease in the value of her plan, as she says this wasn't in line with the performance of the markets at the time.

I can appreciate that Ms R, having seen the value of her plan increase over the years and having continued to pay premiums into the plan, had an expectation that the value would continue to increase. And if you compare the surrender value in 2020, with the amount paid out in 2023, there was an increase, even allowing for the additional premiums paid. I can also see that the highest surrender value quoted was in the middle of March 2022, shortly before Ms R asked for a cash-in quote. So, I can understand why she is seeking some further explanation.

However, as has been outlined, the terminal bonus is not guaranteed. The amount of terminal bonus paid, or whether any bonus is paid at all, is a commercial decision made by Phoenix.

Phoenix has discretion as to how it runs its with-profits fund, including the decisions it makes about bonuses. However, it is accountable to the industry regulator, the FCA. So, it can't act in an arbitrary manner and has to manage its with-profits fund in line with rules and guidance set out by the regulator.

Businesses, such as Phoenix, are required to appoint a with-profits actuary and the FCA provides rules and guidance on their duties. Phoenix also has an independent 'With- Profits Committee' whose role is to protect the interests of with-profits policyholders and ensure that they are treated fairly. In addition Phoenix is required to publish its "Principles and Practices of Financial Management" document which sets out how it manages the fund and is available online. So, there are a number of checks on how Phoenix manages the fund and therefore the decisions it makes, including in respect of bonuses.

The determination of whether to pay out a terminal bonus and the level of bonus relates to the performance of Ms R's plan over the whole period it has been in place. However, I note that the sort of considerations Phoenix will take into account when determining terminal bonus rates aren't just applied to Ms R and her plan. Phoenix will be applying those considerations to all plan holders surrendering their plans at that time but with regards to the investment performance over the time their plan was invested. The aim being to pay each plan holder a fair share of the fund.

I'm not aware the regulator has found any problems or raised any concerns about how Phoenix has managed it's with-profits fund. So although I do understand Ms R's concerns, I've not seen enough evidence to show that it's done anything wrong in the way it has applied a terminal bonus to Ms R's plan.

I also note the point Ms R makes, that she doesn't feel the reduction in the value of her plan was in line with the performance of the markets at that time.

I think the first thing to underline here, is that when a surrender value quotation is given, it is given on the basis of the terminal bonus that would be paid if the plan was encashed on that date. So, it is a quotation rather than a definitive value because the amount of terminal bonus that is actually paid out, when the plan holder decides to surrender the plan and completes the relevant documentation, may well be different. And I think this point was set out in the surrender value correspondence sent by Phoenix.

Phoenix has explained that it reviews terminal bonuses twice a year, but it may review more frequently if it needs to, which I think indicates there is scope for the terminal bonus rates to change and therefore for the value of a with-profits plan like Ms R's, to change, even within the same year.

In addition, a with-profits fund uses a process called smoothing to try and reduce fluctuations in the value of the fund. So, for example it might hold back a proportion of the return in good years to support bonus payments in years where investment returns are lower. That may well mean that whether a terminal bonus is paid and how much is paid, doesn't necessarily reflect market performance at that point in time.

Overall, I ‘m not persuaded on balance that Phoenix has applied the terminal bonus to Ms R’s plan incorrectly or that it has treated her unfairly.

I also note that Phoenix took some time to answer Ms R’s complaint. Ms R has explained that she was suffering with a medical condition, and she found the whole process very stressful.

I am sorry to hear about Ms R’s experience of the complaint process and I think it more likely than not ,that the delay would have caused her some distress and inconvenience. I consider that has been recognised by Phoenix in the two letters it sent to Ms R offering compensation. Complaint handling is not something that falls within my remit however I would recommend that Phoenix pay the compensation it offered to Ms R, if it has not already done so.

My final decision

My final decision is that I don’t uphold Ms R’s complaint against Phoenix Life Limited.

Under the rules of the Financial Ombudsman Service, I’m required to ask Ms R to accept or reject my decision before 13 December 2024.

Julia Chittenden
Ombudsman