

The complaint

Miss F's complaint is about a mortgage endowment policy she had with Phoenix Life Limited. She has complained that the policy fell short of its target value despite having been told in 2016 that the average return for a policy invested in the same fund as hers, over the same period, grew at 8.1% annually, which was sufficient for her policy to have reached its target. Miss F believes that in 1999 when discussions started about the potential shortfalls on mortgage endowment policies, Phoenix made a decision to take advantage of the impending problems and mislead policyholders by telling them their policies were not on track so it could pay them less than they were due. Miss F believes the policy earned good returns until 2001 and Phoenix didn't pay her the amount she was due when the policy matured.

In addition, Miss F is unhappy that Phoenix has not provided all of the information and documentation she's asked it for. She also considers that Phoenix is legally required to pay her a sum equal to the amount of the commission it paid the third-party that sold her the policy.

What happened

In the summer of 1985 Miss F met with a building society – B - to arrange a mortgage to buy what is now her home. B recommended that she take out an interest-only mortgage and an endowment policy as the repayment vehicle. Miss F has explained that she was unable to get the mortgage on her own, so her son joined the mortgage application and was also included as a joint policyholder on the endowment policy.

B, like most lenders at the time, was not linked to any particular life assurance company. It would have had what was called a "panel" of life assurance companies that it was able to sell products from. When B sold a policy from any of those life assurance companies, that company paid it commission for making the sale. This was to pay B for the time and effort it had gone to in selling the product. This was standard practice at the time and remains the case today. In 1985 there were no regulations in place that governed how much commission could be paid or required either B or the life assurance company to disclose to the customer that commission was being paid or how much.

In 2008 B merged with another building society and traded as Y thereafter. When that happened the responsibility for the sale of Miss F's policy became the responsibility of Y.

Miss F was sold an endowment policy with Royal Life. It was a traditional with-profits arrangement over a term of 25 years. It had a basic sum assured of £6,552 to which, hopefully, bonuses would be added during the term. The bonuses came in two general types – annual or reversionary, and final or terminal. The policy had a target of £21,000 and provided the same amount of life cover in the event of either of the policyholder's deaths. The £21,000 was only guaranteed to be paid upon the death of one of the policyholders during the term.

The annual and final bonuses for Miss F's policy were made up of two parts. The first part was calculated as a percentage of the basic sum assured and the second part as a percentage of the bonuses that had already been added in the previous years.

Miss F provided an illustration from the time of the sale. The format of that illustration is different to those provided to Miss F from 2000, as they were produced in line with the requirements of the Regulator in place at the time and were based on assumed annual growth rates. The illustration from the time of the sale was based on the then current level of bonuses continuing for the whole of the policy term. This was fairly standard across the industry at the time and the maturity figure produced exceeded the amount Miss F needed to repay her mortgage.

However, the notes associated with the illustration confirmed that the product provider had set the premium on the assumption that the policy would achieve 80% of the then current bonus rates over the term. This means an annual bonus rate on the basic sum assured of 3.76% and 6.56% on the existing bonuses. This rate would need to be achieved each and every year for the mortgage to be repaid.

Royal Life merged with Sun Alliance in 1996 and became Royal & Sun Alliance Life & Pensions. In 2005 its name was changed to Phoenix Life and Pensions. On 1 January 2007 Phoenix Life and Pensions policies, including Miss F's, were transferred to Phoenix Life, which was another business in the same group as Phoenix Life and Pensions. Each time the life assurance company name changed or when the policy was transferred, the terms and conditions of the policy went with it – they didn't change.

From 2000 all policyholders of mortgage endowment policies were included in an exercise designed to ensure they understood how their policy was performing, and whether it was thought the policy was likely to reach its target value. As with Miss F's policy, when the premium was set for an endowment policy it factored in how much growth (after costs and expenses) the policy needed to achieve each year. The majority of policies that had been taken out after 1988, when regulation had been put in place, required the policy to achieve a growth of around 8% each year. As investment growth/returns in the 1990s had been consistently and materially lower than most of these policies needed, and that was expected to continue, it was decided that policyholders should be kept informed about what was happening with their policies so they could take action if needed to ensure their mortgages were paid off.

The growth rates the life assurance companies had to use in the illustrations were set by the Regulator. When Miss F was sent her first reprojection in August 2000 the rates set were 4%, 6%, and 8%. At that time the industry generally considered that a 6% future growth rate was a reasonable one to expect. Miss F's policy was at that time projected to fall short of the target value if the growth was only 4% each year, but it would reach its target or more, if the policy achieved growth of 6% or more. Miss F was told that it was unlikely she needed to take any action at that time.

The investment markets didn't improve following this and expectations for future growth across the industry reduced. So by the time Miss F was sent her second reprojection letter in the spring of 2003, the higher growth rate used was 5.5%. Her policy was projected to fall short of the target value at all three of the growth rates used with the shortfall varying between £5,100 and £3,600. Miss F was told there was a high risk that her policy would not pay out enough to repay her mortgage. She was encouraged to take action to deal with the situation. The only options the life assurance company could offer itself were alterations to the policy, but it also told her that she could make changes to her mortgage or set up an additional savings plan.

Miss F was sent further rejections, at least every two years, and the growth rates used in them reduced further. All of these letters said that Miss F's policy was expected to fall short of the amount she needed to repay her mortgage at all of the growth rates used. All of them also encouraged her to take some form of action to deal with the anticipated shortfall.

The endowment policy matured in 2010 with a value of around £17,500. Miss F complained that it had been mis-sold to her. Phoenix acknowledged the complaint and explained that B (which was by then Y) had sold the policy to her and so she needed to complain to it. Phoenix forwarded a copy of Miss F's complaint direct to Y, as was standard practice at the time.

In response to a request for information about the policy from Miss F, Phoenix wrote to her on 25 October 2010. It confirmed the details of the policy and that it was only required to keep documents for seven years, so it didn't have a copy of the original application form. Phoenix also provided an explanation of why it couldn't give Miss F details of the charges that had been paid out on her policy:

'A policy of life assurance differs greatly from a Building Society account or a similar investment. In the case of a life assurance policy all premiums, investment income etc. go into a pooled fund from which maturity and death claims, taxation and other expenses are paid.'

'These expenses include marketing and literature costs, administration set up costs, regular administration costs such as premium collection and annual bonus mailings. Thus, bearing in mind the above the charges of the policy are not attributed to each policy separately.'

Since 2010 Miss F has continued to raise concerns about the maturity value of the policy. I won't give a detailed chronology of the correspondence, but in simple terms, she has indicated that she doesn't believe that she was paid what she should have been as she recollects being told the policy guaranteed to pay out the same amount as the death benefit at maturity, irrespective of the amount of bonuses added. She has asked for various pieces of information about the charges, commission and performance of her policy and the fund it invested in. Miss F believes that RSA/Phoenix decided in 2000 when the re-projection exercise started to use it as a way of paying her less than she was due from the policy. She thinks that the failure of the policy to reach the amounts needed possibly amounts to fraud and theft.

In 2013 and 2015 Phoenix provided Miss F with details of the annual bonuses paid on her policy:

Annual Bonus Declared as at	Basic Bonus %	Bonus on Bonus %	Monetary Value BSA £6552.00 Start on 14/08/1995 (£)
31/12/1985	4.50	8.20	294.83
31/12/1986	4.50	7.50	316.94
31/12/1987	4.50	7.00	337.66
31/12/1988	4.50	7.00	361.30
31/12/1989	4.50	7.00	386.59
31/12/1990	3.75	9.25	402.71
31/12/1991	3.75	9.25	439.95
31/12/1992	3.25	8.75	435.20
31/12/1993	3.25	8.25	458.38
31/12/1994	3.00	7.00	436.91
31/12/1995	2.75	5.75	402.74
31/12/1996	2.75	5.75	425.89
31/12/1997	2.75	5.75	450.38
31/12/1998	1.75	4.25	333.51
31/12/1999	1.50	4.00	317.60
31/12/2000	1.50	4.00	330.31
31/12/2001	0.75	2.00	171.76
31/12/2002	0.50	0.50	64.27
31/12/2003	0.25	0.25	32.30
31/12/2004	0.25	0.25	32.38
31/12/2005	0.25	0.25	32.46
31/12/2006	0.25	0.25	32.54
31/12/2007	0.25	0.25	32.62
31/12/2008	0.25	0.25	32.70
31/12/2009	0.25	0.25	32.79
TOTAL BONUS			£6594.73

It also confirmed that the average annual return for a policy invested in the same fund as Miss F's, over the same period, was 8.1%. It didn't confirm whether that was the gross growth rate or net of charges and expenses at the time, although it has now done so. Phoenix has confirmed that if charges and expenses had been taken into account the average annual growth rate was 4.47%.

Miss F informed Phoenix that she hadn't received bonus statements for nine of the years of the term. She asked for copies, which Phoenix told her it couldn't provide, as it didn't hold copies. Miss F also said that she hadn't received all of the warning letters it had referred to – only two from 2007 and 2009. She told Phoenix at various points that she didn't believe its explanations or that it couldn't provide her with the information or documentation she wanted. In 2016 Miss F raised questions about whether commission had been paid to B when the policy was sold. Phoenix confirmed that it had been.

In late 2022 Miss F submitted a subject access request (SAR), in which she asked that Phoenix provide her with details of the charges that had been applied to her policy throughout the term and the commission that had been paid to B. Phoenix sent the SAR to Miss F by email on 5 December 2022 by secure email. Miss F received the email and says that she was unable to open it. She emailed Phoenix on 14 December 2022 and complained

about the format of the SAR response. She said she had called and asked that the information be provided to her in hard copy, but it had not been.

Miss F complained to the Information Commissioners Office (ICO) about the SAR – we do not know the details of that complaint. However, Phoenix has confirmed that it responded to questions from the ICO at that time.

Phoenix responded in a letter of 16 December 2022 and told Miss F the only charges linked to her policy were a monthly policy fee of £1.20 and a charge for providing the life cover, which had cost £4.77 monthly. It said both charges had been included in the premium she had been paying.

Miss F was not satisfied with Phoenix's responses and referred her complaint to this Service in October 2023.

One of our Investigators considered the complaint, but he didn't recommend that it be upheld.

Miss F didn't accept the Investigator's conclusions. She reiterated previous points and issues that she wanted answers to and provided further copy documentation. In addition, Miss F said the least we could do for her was to make Phoenix pay her an amount equal to the commission it paid her lender for selling the policy.

The Investigator considered Miss F's further comments and provided a further response. However, he was not persuaded to change his conclusions.

Miss F didn't accept the Investigator's conclusions and repeated previous comments about commission and what she considered to have been falsified growth rates. She said that none of her questions had been answered. Miss F said the investigation had been inadequate and suggested the Investigator was not interested in her case.

As agreement could not be reached, it was decided the complaint should be referred to an Ombudsman for consideration.

Miss F provided a list of what she said were Bank of England base rates for the years from 1980 to 2009, which she said she understood were used for investments. In most of the years the policy had been in place the interest rate was higher than the bonus rate that had been declared on Miss F's policy. Miss F also said that she believed our remit was to get for her the answers that she wanted. In addition, she reiterated that she believed we could make Phoenix pay her a sum equal to the commission that was paid to the lender that sold the policy.

What I've decided – and why

Miss F has mentioned on a number of occasions time limits and how they should not stop the consideration of her complaint. Phoenix has consented to this Service considering the complaint in full and so whatever time limitations that could have been applied to the complaint and may have potentially meant that it fell outside our jurisdiction, have been waived.

I would also confirm that B and Royal Life were not linked in 1985. As separate businesses, each is responsible for its own actions. So any concerns Miss F has about the fact she was told by B to have an interest-only mortgage and an endowment policy, or reportedly being told the policy guaranteed to reach its target value at maturity, are not concerns that Phoenix can be held responsible for.

I would also comment on the matter of Miss F's concerns about the SAR. If Miss F's concerns relate to Phoenix not responding to her request or not doing so properly, the ICO is the appropriate organisation to consider that complaint. As Miss F has already referred her concerns to the ICO it wouldn't be appropriate for me to comment on the matter too.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I appreciate Miss F's strength of feeling regarding this complaint. I would like to assure her that I have read and considered everything she sent and told us. I trust she won't take it as a discourtesy that I have condensed this complaint in the way that I have.

Although I have read and considered the whole file I will keep my comments to what I think is relevant. If I don't comment on any specific point it's not because I have not considered it but because I don't think I need to comment on it in order to reach the right outcome. This Service is impartial between, and independent from, consumers and businesses. 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. 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. We look at what happened and decide whether, bearing in mind any relevant law, regulations, and good industry practice, the life assurance company did anything wrong.

Miss F has asked that Phoenix be made to pay her the amount of commission it paid B in 1985. It was, and still is, entirely normal for an independent financial or mortgage adviser that sells a life/investment policy to be paid commission by the life assurance company. There was no requirement at the time for Miss F to be told that commission would be paid or the amount of that commission. So I can't find that Royal Life did anything wrong in this regard and I can't reasonably require Phoenix to pay Miss F a sum equal to the commission payment.

At the core of this complaint is that Miss F doesn't believe that Phoenix paid out the amount it should have when the policy matured. Miss F has provided the documentation she received at the time of the sale, which was produced by Royal Life, which includes a question-and-answer document. One of the questions is '*Will my mortgage be repaid?*'. The answer given was:

'In common with other insurance companies we cannot predict the returns which will be paid on policies. The payout will depend upon investment conditions during the policy term. There are, however, a number of checks during the policy term so that you may monitor the progress of your policy.'

Firstly, each year you receive a Bonus Notice and by adding the Basic Sum Assured figure to the Total Bonuses figure this will give you the current 'locked in' value.

Secondly each year the Basic Sum Assured figure plus the attaching Bonus figure are rolled forward on the current Bonus rates to check if they will equal the Guaranteed Death Benefit. Should the Guaranteed Death Benefit figure not be reached, you would be notified to this effect and what action should be taken.

Thirdly, because the policies are conservatively structured from the start there is the potential for the Bonus rates to fall by 20% from the original rate and an amount equal to the Guaranteed Death Benefit would be payable at the end of the policy term.'

I am satisfied that, irrespective of what Miss F recollects from the conversations that took place with B at the time, Royal Life made it clear that while it was optimistic that the target value of the policy would be reached by the end of the term, this was not something that was guaranteed to happen. The final value was dependent on investment returns, which it couldn't predict. So there was always the potential that the maturity value could fall short of the target value, albeit the likelihood of that happening would have been considered to be very low in 1985.

Phoenix provided Miss F with details of all the bonus rates that were applied to her policy. I note that she is unhappy that it can't provide her with copies of bonus statements that she doesn't have in her records. As has been explained previously, Phoenix doesn't have to keep records for more than seven years and, those records don't have to be in documentary form, they are more often electronic. So in not being able to provide Miss F with hard copies of the bonus statements I can't find that Phoenix has done anything wrong.

I have looked at the bonus rates that were applied to Miss F's policy and considered them in relation to the bonus rates that needed to be achieved for the policy to reach its target value. The policy needed to achieve at least a 3.76% bonus on the basic sum assured and 6.56% on the accumulated bonuses each and every year. Quite simply this didn't happen. While the bonus rate was slightly higher than required for the first five years on the basic sum assured, it was below that rate for the other 20 years of the policy. The bonus rate paid on the existing bonuses was paid at the required level for the first ten years, but it was below the required rate for the remainder of the term. The good bonus rates at the beginning of the term would not negate the effect of the very low bonus rates in the second half of the term. So what this means is that the policy simply didn't achieve the returns it needed to in order to reach its target.

I also note that Miss F has indicated she thinks that Phoenix, or its predecessors, didn't send her the bonus statements for the years she doesn't currently have. Sending bonus statements would have been an automated process, so it is most likely that they were produced and sent to Miss F. I won't speculate on why Miss F can't now find the documents, but I think it unlikely it is because Phoenix purposefully withheld specific ones to hide from her years where the bonuses were good, as she has suggested. I have also looked at the bonus rates that were applied to her policy in the years that she can't find the notices for, and five of the eight years had bonus rates applied to the basic sum assured of less than what was needed for the policy to achieve its target.

At the core of Miss F's concerns is the fact that she doesn't think the investment performance of the with-profits fund was as bad as Phoenix has said it was. This was not helped by the letter of December 2016 not being clear about the growth rate detailed of 8.1% being the gross amount of growth of the fund, which would then be reduced by the effect of the costs and charges associated with the fund and the policies invested in it. Phoenix has confirmed the effect of the costs and charges reduced the average growth to 4.47%, which seems more realistic given the investment conditions over the time the policy was in force and more reflective of the level of bonuses that were applied to the policy.

In relation to the performance of the fund the policy was invested in, I can understand that Miss F would like it to have been 8.1 % on average, as she thinks this would mean the full target value of the fund would be due. She has suggested that the performance of the fund was not as bad as Phoenix has stated so that it could keep customers' money. Unfortunately, for Miss F, the evidence doesn't indicate that is the case. Over the majority of the term of Miss F's policy most businesses and investment classes had problems. The economic situation was very different to what it was expected to be in 1985. That is nothing to do with Phoenix. I don't know where its returns "sit" in any table of results, but it will no doubt have been more successful than some and less successful than others.

I note that Miss F has asked for a detailed breakdown of the transactions within the fund and requested that Phoenix send someone who understands investments to explain it to her. Firstly, a breakdown of the type Miss F has requested is not something we would expect a life assurance company to provide. It would be time consuming and costly to produce, for little benefit. A very large number of decisions over a 25-year period relating to investments, costs and charges would have been made by the investment managers at Royal Life, RSA and Phoenix. Those decisions were after the first couple of years in a regulated environment with layers of governance, independent scrutiny (such as by actuaries and the Regulator) and oversight. Some of the factors that significantly influenced returns were outside of Phoenix's control. Even if Phoenix was to provide the detailed breakdown Miss F wanted, and I were to "drill down" to individual decisions that were made, it is very unlikely that I could point to any individual decision or set of decisions which were, without using hindsight, so manifestly bad or wrong that redress should be paid. I am afraid the simple fact is that Miss F took out an investment that performed badly.

Miss F has asked for details of the charges that applied to her policy. While Phoenix provided an amount for a plan charge and the cost of life cover in 2022, they would have been indicative figures. As has been explained before, with a traditional with-profits policy like Miss F's there are no charges levied against the individual policy, as would be seen with an endowment policy that invested in a unitised fund. All charges are levied against the fund, rather than the individual policies invested in it. They are based on the overall liabilities and costs associated with the fund and the cost of managing the fund and the policies invested in it. So Phoenix was not wrong when it told Miss F this and that it couldn't give her a list of the charges that had been deducted from her policy on a monthly and yearly basis.

Much of Miss F's submissions and questions are reliant on her belief that Phoenix paid out less than was due under the policy. As the evidence provided doesn't support that to be the case, I won't comment on those issues.

Miss F has said she feels she has been discriminated against due to her age, gender and relationship status. She has not explained why she considers this, but having considered Phoenix's interactions with Miss F, I have seen no evidence of Phoenix having acted inappropriately or in a discriminatory manner towards her.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Miss F to accept or reject my decision before 20 September 2024.

Derry Baxter

Ombudsman