DRN-4960173

The complaint

Mr P complains that Phoenix Life Limited provided him with incorrect surrender values for his with-profits life and critical illness policy, ignored his telephone calls and fabricated policy statements.

What happened

Mr P purchased an Early Option Mortgage Plan with a provider who has now been acquired by Phoenix. The policy had a term of 25-years and was recommended by a financial adviser in 1999. In 2023, Mr P called Phoenix because he hadn't received recent annual statements and said he believed the policy may have been mis-sold. Around this time Phoenix issued a surrender value for the policy which was incorrect. Mr P complained to Phoenix that he should be entitled to the surrender value they provided and says he had taken out a loan based on the amount. He told Phoenix he believed they had fabricated copy statements and that they didn't return a number of his telephone calls when he raised his concerns.

Phoenix said that although they provided incorrect surrender values, they did provide the correct surrender value later the same month. They didn't feel it was reasonable that Mr P should be entitled to receive the incorrect surrender value. Phoenix accepted that they had provided a poor service by not returning calls and when their agents didn't realise the surrender value, they provided was incorrect, even when he queried this. They paid Mr P £1,000 to reflect the distress and inconvenience their poor service had caused him.

Mr P brought the complaint to the Financial Ombudsman Service and one of our Investigators looked into things. Our Investigator thought that the £1,000 payment Phoenix made to Mr P was a fair and reasonable resolution to the complaint. Mr P asked that an Ombudsman decides the complaint and it has been passed to me to consider.

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.

When making my decision I've taken into account the comments and evidence provided by Mr P and Phoenix. I may not refer to every comment or piece of evidence provided, but I'm satisfied my decision deals with the crux of Mr P's complaint.

Mr P says he is very dissatisfied with the pay-out from his policy and taking into account the Financial Conduct Authority ('FCA') rules and the Consumer Duty, it was not fit for purpose. The policy held by Mr P is a "closed" product (for the purpose of the Consumer Duty). For closed products and services, the Consumer Duty only applies where the event complained about happened on or after 31 July 2024. Mr P's policy matured on 28 July 2024, so the provisions of the Consumer Duty don't apply in this instance. However, Phoenix have always been subject to other FCA Principles and rules and that includes having due regard to Mr P's interests and treating him fairly. I've therefore taken these into account when deciding this complaint.

At the crux of Mr P's complaint is the incorrect surrender values Phoenix provided to him in 2023 and their poor communication regarding this. Although I acknowledge Mr P has a strong view that the actions of Phoenix was the root cause of him making some bad financial decisions, I have decided that the £1,000 Phoenix paid to him is a fair and reasonable resolution to the complaint. I will now explain why.

Mr P says he hadn't been receiving regular statements from Phoenix. He says that the statement he received in November 2020 projected a final value at maturity of £74,000 if the investment grew at 6%. The same statement projected the policy would achieve the target amount of £62,740 if a 3% growth rate were achieved. Phoenix explained in this letter that, *"Growth rates are not guaranteed and a lower rate of return may be more appropriate in the 5 years leading up to maturity."* So, although the projected maturity value in 2020 was greater than the target amount, this was not guaranteed, and I'm satisfied Phoenix made this reasonably clear. Mr P may have considered that his policy would provide a return of £74,000 and made financial decisions based on this figure, but I'm satisfied he would reasonably have been aware that this amount was a projection and was never a guaranteed maturity value.

Phoenix accepts they hadn't been sending regular statements to Mr P over recent years but provided copies of them when Mr P asked for them to be sent. Unfortunately, some of these statements expressed the values of the policy in dollars rather than pounds. I have reviewed the statements and I'm satisfied that comparing them to the statement Mr P received in 2020, it would be reasonably clear that although having a dollar sign in front of them, the figures were meant to reflect the value in pounds. Phoenix apologised for the way in which the figures had appeared on the copy statements. They also apologised that Mr P hadn't been receiving his statements, and explained they were experiencing problems producing annual statements. Mr P believes these statements were fabricated, but they are consistent with what I would expect to see. So, I've decided it's unlikely they were fabricated.

Mr P called Phoenix in September 2023 and asked for an annual statement and a maturity and surrender value. The letter Phoenix sent to Mr P in this regard contained errors. The sum assured was incorrect and the surrender value was £74,500. Phoenix issued a further letter shortly after containing the correct sum assured and a projected maturity value of £64,000. It didn't include a current surrender value. When Mr P called Phoenix to ask for another surrender value, they issued a further letter with a similar incorrect surrender value.

Mr P then asked Phoenix how the surrender value had been calculated as it was higher than the projected maturity value. Phoenix then provided Mr P with a breakdown of the correct surrender values as of 28 July and 17 October 2023, along with a projection for the maturity value on 28 July 2024. Phoenix accepts that it provided Mr P with incorrect surrender values. They also accept that their communication with Mr P in this regard was poor.

Mr P says Phoenix provided a guaranteed surrender value and based on the information received he made the decision not to surrender the policy. He says that Phoenix made it clear the policy was performing well and that he would have bonuses on top of that amount to build over the last 12 months of the policy. He adds that he took out a loan on the basis that it was better to let the policy to run until maturity.

It's not the role of the Financial Ombudsman Service to punish a business if they make a mistake. Instead, I can consider the impact of any mistake a business has made on a consumer. Or, if a financial loss has happened, I can consider asking a business to pay this. In this case, Phoenix do not dispute they issued incorrect surrender values, but I can't reasonably tell them that they should honour these amounts. This is because Mr P's policy was never worth £74,000 as the bonuses earned did not support this amount. Mr P made a decision to leave the policy to mature, based more likely than not on his belief the maturity value would be about £74,000. But, as I've previously explained, at no time did Phoenix say the maturity value was ever guaranteed.

Phoenix sent Mr P incorrect surrender values, but they also provided Mr P with correct surrender values on 5 October and 16 November 2023. I have some empathy with Mr P that the information provided by Phoenix was poor and contradictory, and it would have been confusing for him to form a reasonable view on what the surrender value of his policy was. But I think it's reasonable for me to take into account he had raised concerns about the higher surrender values provided by Phoenix as he sought clarity from them after their letter of 17 October. Regardless of these concerns, Mr P says he made financial decisions based on the incorrect surrender values and projected maturity value of his policy.

The policy was never surrendered and matured on its due date in 2024 achieving the target amount. So, I can't reasonably decide that Phoenix created a financial loss for Mr P. It seems more likely than not that Mr P held on to the policy to potentially achieve a higher pay-out, as Phoenix had projected in the 2020 statement received by him. But it would be unfair and unreasonable for me to tell Phoenix they were responsible for the consequences of the financial decisions Mr P made – especially as Phoenix made it clear in all their correspondence that both the surrender values and maturity values were never guaranteed.

Phoenix didn't send regular statements to Mr P, and he had to chase these up. They also didn't return a number of calls Mr P made and they issued confusing and contradictory surrender values. Agents who worked for Phoenix weren't able to explain to Mr P why the surrender value was higher than the projected maturity value. There was then a delay in Phoenix confirming the correct surrender value to Mr P. The impact on Mr P meant he had to spend a lot of time speaking with Phoenix on the telephone. This caused Mr P some distress and inconvenience. Phoenix has already paid Mr P £1,000 to resolve the complaint. In the circumstances, I've decided this is a fair and reasonable amount to resolve the complaint and I won't be asking Phoenix to do anything else.

My final decision

For the above reason, I've decided that Phoenix Life Limited doesn't need to do anything else to resolve the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 7 May 2025.

Paul Lawton
Ombudsman