DRN-5066031

The complaint

Mr W complains that Phoenix Life CA Limited has misled him as to the expected return he will receive upon maturity of his Sun Life WealthBuilder savings policy.

What happened

Mr W has held his policy since October 1992. It is a unit linked, regular premium investment savings policy, where the contributions are invested in a managed fund, with a 'balanced' risk rating. The policy had an initial monthly premium of £20, rising by 6% per annum; and the premium as of October 2023 was £123 per month. The policy is designed to mature when Mr W reaches a defined age in October 2027.

The policy was originally taken out through Lincoln National, and later taken over by Sun Life Assurance Company of Canada (UK) Limited. In 2023, Phoenix Group acquired Sun Life and in 2024, it was renamed Phoenix Life CA Limited. Since it takes responsibility for Sun Life, for ease of use in this decision I'll hereafter refer to the business as 'Phoenix'.

Mr W first complained to Phoenix in late 2023. He told Phoenix that for the policy year to October 2023, he'd paid in more than £1,200 in policy premiums yet the overall policy value had decreased in that year by approximately £50. He also queried the performance of the policy – at that time it was valued at just over £30,000 but he'd paid £18,000 of premiums. Mr W said the adviser that sold him the policy had explained that the final few years of the term would see the greatest returns – and this now did not seem to be the case.

In December 2023, Phoenix rejected the complaint. It found no evidence that Mr W had been told his policy would see notable profits in the last five years. Phoenix also noted that the value of the policy at the time of writing was £31,631.57 – which was an increase of £1,894.92 on the same date in 2023. That gave Mr W a profit of £488.42 once the premiums were deducted. It therefore could not agree that the policy had seen the loss he described.

Mr W remained unhappy with the response received from Phoenix. He said his policy had made returns slightly under 4% per annum – despite being told in 1992 that the policy may make 7% or even 10.5% overall returns. Mr W submitted that he must have been mis-sold his policy, and Phoenix treated that assertion as a second complaint.

In April 2024, Phoenix rejected the second complaint. In summary, it concluded that the recommendation to take out the WealthBuilder policy had been suitable for Mr W's recorded objectives and circumstances at the time of the sale. In respect of the policy's performance, Phoenix accepted that the performance of the policy had not matched the projections given in the policy documentation – however, these were illustrative examples set by the regulator and were deemed reasonable projections based on interest rates, inflation, and investment growth at the time.

Mr W then brought both complaints to this service. It is the first complaint which is the subject of my final decision; the second complaint has been addressed separately. In respect of this complaint, Mr W said he has held another savings investment policy with a different business over a similar period. Whilst he accepted that the two aren't entirely comparable, his other policy had provided significantly improved returns compared to the Phoenix policy – and both utilised similar risk investment funds.

An investigator reviewed the complaint, but he did not believe it ought to succeed. He appreciated Mr W's reliance on the projected returns set out in the sales literature for the investment – but these were not guaranteed. Furthermore, he did not believe there was any suggestion that Phoenix had mismanaged the investment such that it was liable for poor performance or a limited return on Mr W's contributions.

Mr W didn't accept the investigator's view. He explained that he just couldn't understand how the fund could have performed so poorly compared to his other policy – and this underperformance ought to be subject to greater scrutiny by this service.

Mr W asked for his complaint to be referred to an ombudsman. Phoenix did not make any further submissions. The complaint has now been passed to me.

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 thank both parties for their considerable patience whilst this matter has awaited referral to an ombudsman, given the current demand for our service.

In reaching my decision, I will take into account relevant law and regulations, regulator's rules, guidance, standards and codes of practice, along with what I consider to have been good industry practice at the relevant time. I will also focus on the issues I believe to be central to the complaint. That's because my role is to review the evidence presented by Mr W and Phoenix to reach what I think is an independent, fair, and reasonable decision based on the facts of the complaint.

As I've explained above, this decision is limited to Mr W's original concerns about the performance of his investment, which he believes contrasts notably from the information he was given in 1992. I cannot look at any aspect of the overall suitability of the investment, or the sale itself – because those matters were covered in the second complaint, and that has been reviewed by our service as the subject of a different, distinct complaint.

I should also make clear that complaints about investment/fund performance do not relate to a regulated activity and fall outside of my remit. We are limited by the rules governing this service, as defined by the Financial Conduct Authority. In order to proceed under the rules, complaints to this service need to be about acts or omissions by a respondent business in relation to the carrying out of specific regulated activities or any ancillary activities, So, I'm unable to investigate whether the performance of the fund is unreasonable, as that isn't a regulated activity of itself. However, I can look at Phoenix's administration of the policy.

Consequentially, it's also important for me to point out that we do not act in the capacity of a regulator. That remit falls to the FCA. I know my explanation will be disappointing for Mr W as I believe he would like this service to provide him with a view on the operation of the fund manager and the fund performance. But, for the reasons set out, I'm not able to do so.

Whilst Mr W is entitled to form his own view on the reasonableness of Phoenix's operation of the policy, I must also do the same. From an objective standpoint, I do not consider its administration to have been unfairly handled or that Phoenix has failed to behave reasonably or professionally in the circumstances.

Mr W's unhappiness with the performance of the balanced fund – comparatively to his other investment savings policy - is not evidence of itself of any wrongdoing by Phoenix. Overall, I am not persuaded that the fund choice was unreasonable. Whilst other investment funds with a similar risk profile might've performed better, this doesn't mean that there has been mismanagement by the fund manager(s). In its final response letter, Phoenix set out how external factors have had an influence on investments such as Mr W's. It detailed how the economic position both nationally and globally had altered in respect of interest rates – which had dropped and remained historically low over many years, along with wider impact factors such as the financial crisis of 2008 and the pandemic in 2020. It did this to explain why the return on Mr W's investment was lower than he might have expected from the projections given in 1992.

I believe that the information provided by Phoenix was reasonable; it explained the overall performance from the business's perspective against the wider market influences. I've not seen any objective evidence that would lead me to conclude that Phoenix has mismanaged the investment or has otherwise unreasonably provided information about the fund.

At the time Mr W took out his policy, it was a balanced-risk means of saving over a long term to potentially achieve better returns than those found in deposit-based bank accounts. Unit linked savings policies had tended to provide good returns historically, and there was a reasonable expectation this would continue.

However, in its projections, along with the annual statements issued to Mr W since the policy began – Phoenix gave clear warnings that the investment value could decrease as well as increase. One such example was at Mr W's request; a letter dated 9 October 1996 was issued to Mr W following his request for projected values. The letter gave 5% and 10% growth projections for the whole policy term of 35 years – the 5% return being some £41,700. However, it said:

> "*In order to provide an indication of the possible benefits that might be paid under this policy, the Personal Investment Authority, the regulatory authority for the marketing of life assurance, pensions and unit trusts has adopted rules which lay down the basis on which future benefits may be illustrated. The figures quoted in these illustrations comply with the rates of return and other factors as set out in the rules. All insurance companies use these rates of return for illustrations, but their charges vary.*
>
> *Please note that the rates of return used do not represent the upper and lower limits of the possible amount of the benefit. What is actually payable will depend on the future movements of unit prices, which can go down as well as up, and the effect of the charges applicable to the policy.*
>
> *These projected values are only examples and are not guaranteed. You could get back more or less than this.*"

I consider these illustrations were reasonable; they sufficiently explained the type of maturity value range that might apply to Mr W's investment. An exact return couldn't have been known at the time of the sale, which is why they were presented as illustrative guidance only. The performance of the investment depended on various factors – and Phoenix has set this out clearly to Mr W.

It follows that though the policy may not have – to date - delivered the returns Mr W expects, this of itself is not a sufficient reason for me to uphold the complaint. And since I'm satisfied that Phoenix has dealt with the complaint fairly, I won't be asking it to do anything further.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr W to accept or reject my decision before 24 March 2025.

Jo Storey
Ombudsman