DRN-5096373

The complaint

Mr S is unhappy with Phoenix Life Limited (PLL), believing they failed to notify him of certain features of his policy with them, causing him financial loss.

What happened

Mr S started paying into a private pension with Sun Alliance Life and Pensions, since taken over by PLL, in 1988. This policy was sold to him by a financial advisor I'll refer to as SEL. The premiums paid started at £10 per month, rising to £20 per month before Mr S stopped making payments into the plan in about 1991. Mr S was aged 30 at this time.

PLL sent Mr S a retirement pack in April 2021 (a few months before his 60th birthday). Upon receipt of this, Mr S realised that his pension plan hadn't been index-linked from the time he took it out. Mr S complained to SEL about this, believing they'd failed to notify him about this when they sold him the plan, or at any time thereafter during the lifetime of the plan.

That complaint couldn't be resolved and was brought to this Service to consider. However, one of our Ombudsmen didn't uphold it. She concluded that, whilst it was probably agreed that SEL *didn't* advise the plan *wasn't* index-linked, they did most likely advise on what the policy *did* do, and what type of policy it was. That was all SEL could have reasonably been expected to do, and there was no obligation for them to have set out all the things that the plan *wasn't.* She highlighted that the PLL pension was invested in a 'with-profits' fund, and there was nothing in any of the sales documents issued at the time to suggest the pension was index-linked.

Mr S then raised a complaint with PLL in September 2023, expressing various concerns which I summarise as follows:

- PLL hadn't informed Mr S that their plan wasn't index-linked, or that it wouldn't keep up with inflation after maturity, and had therefore mis-sold the pension to him. Similarly, he'd received no warnings from PLL, during the term of the plan, that the pension wasn't index-linked.
- Mr S had experienced various communication problems during these enquiries with PLL - some phone numbers being unobtainable, emails not responded to, and a message that was jumbled and of poor quality.
- Mr S also experienced problems cashing-in his plan – his completed forms weren't received by PLL, and a promised replacement wasn't received by him.

PLL upheld certain elements of the complaint – relating to the administration matters – and have paid Mr S a total of £200 compensation for the inconvenience caused by these mistakes, plus a further £50 for delays in addressing Mr S' complaints. In relation to Mr S' issue with phone calls, however, this had already been addressed in May 2023, and compensation offered, and so wouldn't be revisited again.

But PLL didn't uphold the remaining elements of Mr S' complaint. They confirmed that Sun Alliance wouldn't have been responsible for training SEL as his independent financial advisor. Instead, they'd have provided SEL with literature that allowed them to recommend their plan if that's what they felt was suitable.

PLL also said the statements they'd sent correctly set out the features of Mr S' plan, rather than set out features that weren't part of his plan – so there was no issue with lack of warnings about the plan not being index-linked. And nothing that PLL had sent over the years should reasonably have led Mr S to believe that his plan was index-linked. Further exchanges between Mr S and PLL occurred, resulting in them paying Mr S a further total of £200 for the delays in dealing with his complaints.

Unhappy with their responses, Mr S approached our service. He remained unhappy that PLL hadn't advised him that his plan wouldn't provide index-linked benefits at maturity and asked us to investigate that complaint.

PLL initially said that he'd brought it to us too late under the rules that govern what complaints we can and can't consider, and we didn't have their permission to consider it further. They felt it had been brought to us more than six months after the date they'd issued their final response to Mr S in relation to this complaint.

However, one of our Investigators disagreed, and so went on to consider the merits of Mr S' complaint. But he didn't think PLL had done anything wrong. Our Investigator essentially concluded there was no evidence PLL had said or done anything that would reasonably have led Mr S to believe the plan was index-linked. And it wouldn't be fair to hold PLL responsible for any misunderstandings Mr S may have had about the features of his plan.

Unhappy with this, Mr S responded by suggesting that our Investigator had been influenced by the earlier Decision (against SEL) which was not upheld. He reiterated his belief that PLL's inability to provide any evidence that his pension was not index-linked is "*proof in itself*" that he was never told. And he suggested our Investigator's acknowledgement that PLL's annual reports contain no mention that his pension wasn't index-linked is further evidence that PLL failed in their duty of care to tell him that his pension wasn't index linked.

He asked for his complaint to be considered afresh by an Ombudsman, and so it's been passed to me for that purpose, and to issue a Final Decision accordingly.

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.

Before considering the merits of Mr S' complaint, I first need to address the jurisdiction issues that PLL have raised here. To do that, I need to look at the letters PLL sent to Mr S after he'd first raised a complaint with them.

When a business provides their final response letter (FRL) to a consumer's complaint, the Financial Conduct Authority's Rules (at DISP 2.8.2) require that response to provide referral rights to our Service. That response must also make clear there is a time limit by which the consumer should refer their complaint to our Service – within six months of the date of that FRL. The above Rules also explain that our Service cannot consider any complaint brought to us outside that time limit unless the relevant business provides consent for us to consider it. PLL said that Mr S brought his complaint to us outside of this six-month window.

So, before considering the merits of Mr S' complaint, I need to decide if the complaint was brought within that six-month window (in which case I can consider the merits of the complaint), or outside that window (in which case, I can't consider its' merits).

PLL's initial Final Response Letter – 26 September 2023

This FRL provided a detailed response to Mr S' complaint, breaking it down into eleven (some connected) points, which can be summarised as:

- Points one to five essentially dealt with the advice Mr S received to take out the PLL policy. PLL said that particular matter was effectively dealt with by our service when we considered his initial complaint against SEL, and *"need not be reviewed again, as [this]*

complaint does not appear to bring forward any materially different issues to those previously considered".

- In respect of 'point six' – Mr S' difficulty in contacting PLL by phone – PLL said they'd already dealt with that specific matter in an earlier FRL dated 19 May 2023, and had paid him compensation of £50 in respect of that issue. They confirmed if Mr S was unhappy with that outcome, he would have needed to bring that complaint to us within six months of the date of that FRL (so, by 19 November 2023).
- Finally, PLL's FRL said Mr S had a right to refer his complaint to our service in respect of the remaining points addressed (points seven to eleven) within their FRL. These were that Mr S received no warnings from PLL, verbal or written, to tell him his pension would not be index-linked, plus various admin-related complaints - poor quality phone communications, emails not responded to, and problems with the receipt of Mr S' completed encashment documents and reissue of new ones.

I think this FRL was clear in stating that Mr S had six months from 26 September 2023 to refer his complaint to us (aside from, 'point six', which I think was clear that an earlier deadline applied). In other words, by 26 March 2024.

Before considering the second FRL that PLL sent, I want to address the points PLL made regarding points one to five as set out above. PLL seem to have adopted the position that because these matters had been addressed by our service when Mr S complained about SEL, that outcome also applies to his complaint about PLL. That is fundamentally incorrect.

Whilst it is certainly the case Mr S can no longer complain to us about SEL's involvement in the recommendation of the PLL plan (and the index-linked complaint elements of that), as we have issued a Final Decision on that matter, we have not considered any complaint against PLL in relation to those matters. These complaint points (one to five, as above) are new and separate complaints about PLL's involvement in the sale of Mr S' plan, and the subsequent communications that took place. These are matters that can, in principle, be considered as part of this complaint.

PLL's second Final Response Letter – 26 January 2024

Unhappy with PLL's initial FRL response, Mr S asked them to reconsider their position, resulting in their second FRL on this date. PLL reiterated it was SEL who arranged the policy for Mr S. PLL weren't responsible for the advice to take out the policy. PLL said it was SEL's responsibility to ensure Mr S was aware how the policy worked. And PLL complied with their regulator's requirements in terms of communicating the correct information about the policy in the subsequent years. PLL, again, didn't uphold the complaint, but did offer to pay Mr S a further £150 compensation due to the delays in them dealing with his further complaint enquiries. Their FRL concluded by again confirming Mr S had six months from the date of that FRL (26 January 2024) to refer his complaint to us.

PLL's third Final Response Letter – 24 May 2024

Following Mr S' continued unhappiness at PLL's conclusions, they issued a further FRL, confirming they stood by their previous FRL outcome. They confirmed the six-month referral period ran from the date of the second FRL, effectively expiring on 26 September 2024 (except for an award of a further £50 compensation, the referral period for this running from the date of this third FRL).

Which is the relevant six-month expiry date for the purposes of this complaint?

Having considered the evidence here, I'm satisfied that PLL's second FRL is the relevant FRL for the purpose of calculating the six-month referral period here. Whilst I think it's clear that PLL provided their substantive reasoning/response in the first FRL, their second one – which was issued following their reconsideration of, essentially, the whole of Mr S' complaint is clear that the six-month referral period runs from the date of that second FRL. The

language within that FRL is very clear on that point. Accordingly, I think Mr S was entitled to interpret the six-month period as having started from the date of the second FRL.

That conclusion is strengthened when considering the comments contained in the third FRL, which specifically refers to the date of the second one as being the key date for this purpose. I appreciate PLL have since told us that they'd made a mistake in their second FRL (and presumably third one too), and shouldn't have given 'new' referral rights in that FRL. However, that isn't Mr S' fault. New referral rights were clearly given, and repeated, meaning Mr S had until 26 September 2024 to bring his complaint to us. He brought his complaint to us on 17 May 2024 – so within time – and accordingly I'm satisfied his complaint is one that this Service is able to consider under the relevant DISP Rules. And I will now do that.

Mr S' complaint against PLL – the merits

I've thought very carefully about the points made by both parties here. I've considered all the documents and commentary provided by both parties, together with point-of-sale documents and PLL plan annual statements (provided by Mr S in his previous complaint against SEL). Having done so, whilst I agree there have been administrative problems caused by PLL, I don't think they've done anything wrong in terms of how they've communicated the features of their plan to Mr S. They did not 'mis-sell' the plan to Mr S. I know this will come as a great disappointment to Mr S, whose strength of feeling I fully appreciate, so I'll explain why I've reached this outcome.

Points one to five

As I explained above, I'm satisfied I can consider these complaint points. Mr S' point is essentially that, because our Service had previously concluded (following a Final Decision) that SEL *hadn't* done anything wrong by not alerting Mr S the PLL plan didn't provide an index-linked pension upon maturity, it must follow that PLL *were* responsible for mis-selling him a plan because they too didn't alert him that his plan wasn't index-linked either.

I disagree. First of all, PLL didn't 'sell' Mr S his PLL plan. He'd engaged the services of SEL, back in 1988, as his financial adviser to recommend a pension plan for him to pay money into. I don't need to comment any further on what happened then – what SEL told him or didn't tell him – because our Service has already considered that. But I will say that Mr S' PLL plan was recommended to him ('sold' to him, in other words), by SEL. It was SEL who appeared to decide the PLL plan seemed to be the most appropriate plan for him at the time – presumably having considered various other pension plans on the market at that time. And Mr S clearly accepted SEL's recommendation based on what he'd been told at that time.

PLL played no part in selling, advising or recommending this plan to Mr S, and accordingly I don't uphold this element of Mr S' complaint.

Point six

PLL have advised this issue has already been dealt with in an earlier FRL, with referral rights expiring before Mr S brought this current complaint to our Service. So, on that basis, it's not a complaint that I need to consider here, and accordingly make no further comment on that particular matter.

Points seven to eleven

I'll begin by looking at Mr S's issue that PLL didn't alert him to the fact his plan wasn't index-linked. Mr S is adamant that PLL never informed him that the plan *wasn't* index-linked upon maturity. Having looked at the documents available, I agree. There is no specific mention that the plan, when Mr S takes his benefits, *will* provide an index-linked retirement income. But, there is no reason for PLL to have explained this to Mr S, either when he was deciding whether to take out the plan, or in subsequent Annual Statements that PLL provided.

PLL's only obligation, both at inception and thereafter, was to provide clear information about the features of Mr S' plan. And having seen the sales documents from the time of the sale in

1988, it's clear that PLL's documents did set out the features of their plan. Those features were, in summary, that the plan was a 'with profits' one, and provided a guaranteed basic sum when Mr S reached his 60th birthday (a minimum guaranteed annuity rate at retirement equivalent to £92.50 for each £1,000 of plan proceeds available).

PLL's annual statements in 2014 and 2015 also confirm the plan was invested in with-profit funds, the guaranteed fund and transfer value, and that the plan is a type of savings plan, designed to build up a fund which can be used to buy an income at retirement. Again, these statements contain all the information that PLL would be expected to provide – full details of what the plan is, and what it's worth.

I've also seen the retirement pack that PLL sent to Mr S in October 2019, which (amongst other things) provided details of the ways in which Mr S could access his benefits when he decided to take them. I won't list these in detail here. However, I want to highlight the 'Retirement Options Statement', and pages two and three of that document, which explains the annuity options. Answering the question "*Do I want my income to increase over time to keep up with inflation?"*, the statement says "*…consider an escalating annuity, which starts lower but increases over time, or adjusts to rise in line with inflation".* So, in essence, making it clear that an escalating annuity was a possibility, in certain circumstances, if that was something Mr S wanted to explore.

There is (or was) no obligation on PLL to inform Mr S about plan features that don't exist – they don't have to confirm a negative in other words, just to clearly set out the relevant facts and elements relating to the product Mr S had with them. Which here, I'm satisfied they did.

I understand that Mr S has not taken benefits from this PLL plan yet. In that regard, I hope it might be of assistance to Mr S to explain that, as would usually be set out in any retirement packs received (and as highlighted above), he *does* have the option of exploring the pensions marketplace to locate a provider that would be able to provide an annuity that will increase each year. His current plan – a with-profits plan – has been invested in the markets since it was started. It will have a cash-in value – that is, the amount that can be used to purchase an annuity from a pension provider (approximately £4,500 as at the end of March 2025). But Mr S may wish to be aware that any annuity that incorporates annual increases will likely start by paying a lot less than an annuity that has a fixed amount for its entirety. Clearly, that is a matter for Mr S to consider, and what I've said above shouldn't be read as advice.

So, to conclude, I'm satisfied that PLL wasn't under any obligation to warn Mr S that their plan *wasn't* index-linked (or provided any annual increase) after he took his benefits. And their communications with him fairly and adequately set out all of the relevant plan information that they were required to provide to him. Accordingly, I don't uphold this complaint.

Distress and Inconvenience (D&I) compensation

Finally, I want to consider the distress caused by the way PLL have communicated with Mr S in the past few years. PLL have accepted, in their first FRL, their communications fell short of an acceptable standard. Having considered what both parties have said here, I agree. Leaving aside Mr S' unhappiness at the outcome of his complaint against PLL, I think it's clear that PLL could have communicated better with him. And I'm pleased to see that PLL have paid Mr S some compensation in relation to the distress they've caused. In relation to this complaint, they've paid him £450 in total, which includes an element of compensation for delays in addressing his complaint points.

In terms of whether I think that sum is a fair reflection of the distress caused, I must bear in mind that the amounts this Service awards for D&I are fairly modest in value. Our D&I awards are not designed to punish a business, but rather to put a monetary value on the distress a business' actions have caused. Guidelines setting out our approach to such awards can be found on our website. So, taking account of what I've said above, and having careful regard to our guidelines on this subject, I think the amount PLL have paid to Mr S for D&I is appropriate here – it's the sort of amount I'd have been asking them to pay had PLL not already assessed and made a payment. So, I won't be asking PLL to increase this amount.

My final decision

I don't uphold Mr S' complaint against Phoenix Life Limited, and make no award against them.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 13 June 2025.

Mark Evans
Ombudsman