

The complaint

Mr C complains about the performance of his investments and the lack of bonuses applied by Phoenix Life Limited, referred to as “*Phoenix*”.

To put things right, Mr C would like the policy values to be brought up to be in line with inflation and terminal bonuses reinstated.

What happened

Mr C took out two whole of life policies with the Australian Mutual Provincial (AMP) in September 1981 and January 1985. AMP later became a part of Phoenix in 2006 and the policies were transferred over – that’s when Phoenix took over the administration of the policies.

I understand that premiums were invested in the provider’s With Profits fund and went to providing a sum assured. It seems that up until 2003 bonuses were added to the policies.

In late January 2024, Mr C contacted Phoenix to find out why his surrender value had decreased since 2020 and query why no bonuses were being applied to his policies. He says that when he took out the policies he was assured that there’d be annual increases and a terminal bonus.

In early February 2024, Phoenix wrote to Mr C in response to his queries, explaining what was happening and why. But unhappy with its response in late March 2024 Mr C sought further clarification.

In early April 2024 Phoenix provided a more detailed explanation. Unfortunately, the correspondence only contained the details of one of the policies, which led Mr C to contact Phoenix again.

In mid-May 2024 Phoenix issued a Final Response Letter (FRL) rejecting the complaint. In mid-June 2024 it issued two further responses, in response to Mr C’s continued questioning – in the latter it offered Mr C £200 for service-related issues, including responding only in relation to one of the policies.

Phoenix maintains it has seen no evidence that Mr C was told that he’d receive annual increases and/or a terminal bonus. However, it has said it is willing to reconsider its position if Mr C is able to provide evidence to support his claim.

Unhappy with Phoenix’s response, Mr C referred his complaint to our service.

One of our investigators considered the complaint but didn’t think it should be upheld. In summary, he said:

- Although Mr C is unhappy about the performance of the policies – in particular the 2020 value compared to the 2024 value – Phoenix isn’t responsible for this.
- Phoenix explained that the funds were invested in a managed fund, so it has no

control over the performance of the policies.

- These policies were taken out prior to the Financial Services Act 1986, so there's limited information available.
- Mr C isn't complaining about the suitability of the policies but about their administration – namely the performance and lack of terminal bonuses - which is what the investigator's looked at.
- Performance isn't something that Phoenix can predict or control. Performance is down to numerous external factors, including risk.
- No reversionary or terminal bonuses have been applied to the policies since 2003. Based on what Phoenix says, although the policies are with-profit contracts they're permitted to have a zero-bonus rate. In this instance it was down to a change in investment strategy, namely a move away from focusing on 'growth' and towards 'protection of the guaranteed benefits' held by the policies invested in the fund.
- Phoenix explained that any reduction in surrender value was due to changes in the asset share factor applied to Mr C's policies. Phoenix applied this to ensure that customers who surrender their policies before the full term don't adversely impact the value of the remaining policies.
- In the circumstances, the investigator can't say that Phoenix behaved unreasonably.
- Mr C was offered (and subsequently paid) £200 compensation for the distress and inconvenience caused by some service-related issues, which is broadly fair and reasonable in the circumstances.

Mr C disagreed with the investigator's view and asked for an ombudsman's decision. In summary he made the following key points:

- £200 was paid into his account without his knowledge, nevertheless he doesn't accept this and thinks he should be paid a greater amount.
- He doesn't accept the explanation offered by Phoenix. The profits accrued to 2003 aren't accounted for.
- Because the annual bonuses haven't been paid the product's proved unsuitable. They've not maintained their value in line with inflation – the peaks and troughs are meant to balance out and they haven't in this case.
- Phoenix changed its strategy – from growth to protection – without his consent. Is this reasonable?
- The bonuses accrued up to 2003 were guaranteed up until that point because they'd already been accrued.
- He continues to pay premiums of £14.46 and £14.73 a month and questions what this is for?
- Given his current health situation, he owes his family a duty of care to ensure their financial future.

Our investigator having considered the additional points wasn't persuaded to change his mind. In summary, he said:

- He accepts that no annual bonuses have been applied since 2003, but he's seen no evidence that this was guaranteed in any case.
- Phoenix was entitled to change its strategy in line with its terms and conditions.
- Phoenix made clear the following:
 - *"no reversionary or terminal bonuses have been applied to your policy since 2003. Although your policy is a with profits contract, we are permitted to declare a zero bonus rate. As we have explained on the annual statements the change was applied the investment strategy of the with profits fund in which your policy has been invested. We have moved from growth to the protection of the guaranteed benefits held by the policies invested in the*

fund. Any surrender value quoted is guaranteed for 21 days from the date of the letter it is quoted on, to enable customers to make financial decisions on a fixed value. However, the actual surrender value can rise or fall at any time even factoring in that premiums are being received on a policy. As our previous letter stated any reduction in the surrender value payable is due to changes to the asset share factor applied to the policy. The asset share factor is applied to ensure clients who surrender their policies before the full term of the policy is reached, do not adversely impact on the value of policies left invested in the with profits fund."

- Mr C continued to pay the premiums so that he'd continue to have the benefit of life cover.

Mr C provided correspondence dated 2019, which intimated future growth and a final bonus. This is one of the reasons why he declined to surrender the policy, despite enquiring into the possibility of doing so at the time.

As no agreement has been reached the matter has been passed 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.

Having done so, I agree with the investigator's conclusion for much the same reasons. I'm not going to uphold this complaint.

On the face of the evidence, and on balance, I'm unable to safely say that Phoenix behaved unreasonably in this instance.

In other words, I can't blame Phoenix for the performance of Mr C's policies, because it's not something that it can predict or control. I also can't say that it has done anything wrong by not including a terminal bonus, because there was no guarantee or undertaking that it would do so.

But before I explain why this is the case, I'd like to thank the parties for their considerable patience whilst this matter has awaited review by an ombudsman, due to the current demand for our service.

I also think it's important for me to note I very much recognise Mr C's strength of feeling about this matter. I'm very sorry to hear about his recent health situation, I appreciate this must be a difficult time for him and his family.

Mr C has provided submissions to support the complaint, which I've read and considered carefully. However, I hope he won't take the fact my findings focus on what I consider to be the central issues, and not in as much detail, as a discourtesy.

The purpose of my decision isn't to address every single point raised. My role is to consider the evidence presented by him and Phoenix, and reach what I think is an independent, fair, and reasonable decision based on the facts of the case.

I note Mr C's complaint is about the administration of his policies – in relation to performance and terminal bonus in particular since 2003 – and not about their suitability. If Mr C would like to specifically complain about the suitability of the policies he's able to do so, but he will need to make that complaint to Phoenix – or to whoever sold him the policies – first and give

it an opportunity to respond. If he's unhappy with the response, he can then refer the complaint to our service.

The above notwithstanding, I'm aware that in 2016 Mr C raised issues relating to the sale of the policies, as well as the value, and what he was told would be the value of the final bonus and performance from a sale perspective. I'm also aware that prior to this he'd written to Phoenix in 2012 enquiring about bonuses declared and the difference between death value and the value on his statement. I don't think the current complaint relating to administrative issues is the same, therefore I don't think it requires me to consider whether we have jurisdiction to consider this complaint.

Businesses aren't generally required to keep records indefinitely. They're not generally required to retain documentation beyond six years and if the policy has been surrendered or is over 40 years old it's unlikely it'll have a full point of sale file. In the circumstances I can't blame the business for not having more information or not being able to provide a more definitive answer to Mr C's assertion about what he says he was told in 1981 and 1985.

In any case, because the policies were sold before the introduction of the Financial Services Act 1988 there wasn't a requirement to complete a fact find detailing what was discussed, or a 'reasons why' letter explaining why these policies were sold.

I don't uphold this complaint, in summary, for the following reasons.

- Poor performance is not something that I can blame Phoenix for because it's not something that it could predict or control. Performance is down to a multitude of factors, including risk, and the global geopolitical climate, that Phoenix has no control over. I appreciate Mr C was hoping for greater growth, but I note that no guarantees were given as to how the investments would perform.
- The above points are fundamental to why I can't safely say that Phoenix behaved unreasonably in this instance or that it is to blame for the performance of Mr C's policies.
- I note Mr C concedes that market performance can fluctuate, however he believes that the 'peaks and troughs' are meant to balance out. Whilst I appreciate what he says – performance can (eventually) balance out – this of course is not always the case. There are no guarantees that they will balance out or be in line with inflation leaving the investor better off.
- Mr C will be aware that investors, depending on their level of risk, can find themselves in a position where they end up with less money upon surrender than they put in – although this doesn't appear to be the case with Mr C and it's not what he's claiming.
- In this instance the terminal bonus wasn't guaranteed and could go up or down. I think it's more likely (than not) this would've been made clear to Mr C at the outset.
- I think it's up to Phoenix, whether (or not) to award a terminal bonus, and if so, by how much depending on the underlying fund performance. This is not something that our service would generally get involved in. It's not for us to tell Phoenix how to run its business, unless it has behaved unreasonably which I don't believe it has in this instance.
- I'm mindful of the points made by Mr C – about what he says was 'intimated' in the 2019 correspondence. But despite what he says, I note that the documentation he refers to also made clear that: *"Only at death will the full value of the guaranteed benefits payable on your policy, along with a **possible** Final Bonus, be paid"* (my emphasis added). This suggests that the final bonus is a possibility, and not a guarantee – much like the final figure – so Mr C may (or may not) receive it, depending on Phoenix's discretion.

- I'm satisfied that Phoenix is entitled to decide – based upon recommendations from its actuaries – how much annual and terminal bonus it applies (if any). I note Mr C says he was assured that there would be annual increases and terminal bonuses which could be more than the sum assured but I've seen no evidence that this was the case.
- I note Phoenix changed its strategy in 2003 (from growth to protection) for the benefit of not only Mr C but other investors to protect against any adverse consequences from investors surrendering their policies before full term. Despite what Mr C says, I think prior to 2003 it's more likely than not he received the value of the gains accrued by the fund.
- I note Phoenix explained that any reduction in surrender value was due to changes in the asset share factor applied to Mr C's policies. Phoenix applied this to ensure that clients who surrender their policies before full term don't adversely impact the value of the remaining policies. Based on what it says, I can't say that Phoenix has behaved unreasonably.
- In the circumstances, Phoenix wasn't required to obtain Mr C's consent before it changed its strategy and hasn't done anything wrong by not doing so. This is a business decision that it's entitled to make without getting approval from the investors. Put differently, I've seen nothing to suggest that Phoenix should've sought Mr C's consent so hasn't behaved unreasonably by not doing so.
- On the face of the evidence, and on balance, I'm satisfied that Phoenix has endeavoured to answer – and has reasonably answered – Mr C's questions and queries. I appreciate it's not to Mr C's satisfaction, but this doesn't mean Phoenix has behaved unreasonably.
- I also realise that this is all frustrating for Mr C, but I cannot agree that Phoenix has behaved unreasonably, outside of the policy terms, or contrary to any regulatory requirements. I note Mr C doesn't agree with this but that doesn't mean that I should automatically conclude that Phoenix has behaved unreasonably. In other words, I can't uphold his complaint because I don't find Phoenix has acted unfairly in all of the circumstances.
- I appreciate that Mr C continues to pay a total of £173.52 and £176.76 annually for the two policies, which he will need to do in order for the policies to continue.
- Finally, I've also considered that Phoenix paid Mr C £200 compensation for the inconvenience and frustration it caused him – notably Mr C being unable to make contact with the previous complaint handler and when it responded referring to only one of the policies. Despite what Mr C says I note the letter dated 18 June 2024 made clear that payment would be made within 10 working days. I'm pleased to see Phoenix identified these mistakes at the earliest opportunity. The payment it made to Mr C was appropriate in the circumstances and I don't believe Phoenix needs to do anything further to resolve this complaint.

I appreciate Mr C will be unhappy I've reached the same conclusion as the investigator. Furthermore, I realise my decision isn't what he wants to hear. But on the face of the available evidence, and on balance, I'm unable to uphold this complaint and give him what he wants.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 14 February 2025.

Dara Islam
Ombudsman