

The complaint

The estate of Mrs W complains that Phoenix Life Limited unfairly reduced the final bonus on a with-profits whole of life policy claim.

What happened

Phoenix paid the estate of Mrs W the basic sum assured and bonuses on the late Mrs W's whole of life policy. The estate of Mrs W complained that the final bonus Phoenix paid was lower than had been indicated on previous annual statements.

Phoenix explained that the only value guaranteed to be paid upon death is the sum assured along with any annual bonuses which may have been added to the policy during its term. They added that the annual statements show that the final bonus may be more or less than in previous years and was not guaranteed. Phoenix did not uphold the complaint.

Mr T, who is the Executor for the estate of Mrs W, brought the complaint to the Financial Ombudsman Service and one of our Investigators looked into things. Our Investigator thought that Phoenix had treated the estate of Mrs W fairly and reasonably as the final bonus in a with-profits investment is not guaranteed. Mr T 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.

The crux of the complaint is that the estate of Mrs W believe Phoenix withheld important information about how they calculate bonuses on their with-profits funds, and that by doing so the estate was treated unfairly. I acknowledge Mr T's strength of feeling in this regard, but for very much the same reasons as our Investigator, I have decided Phoenix didn't treat the estate of Mrs W unfairly. I will now explain why.

There are two types of bonuses Phoenix can add to a with-profits life policy.

The first is a bonus that once added can't be taken away even if the fund performs poorly in future. In this case a bonus of £378 appeared in the 2021 and 2022 statements issued to the late Mrs W and was paid as part of the claim value. The second bonus – often referred to as a final or terminal bonus - may be added at the end of the policy when it is surrendered, or a claim is made following death.

Whether a final bonus is paid and how big it is depends on how well the fund performs over the whole time the investment has been in place. In this case, I've looked at the regular statements Phoenix provided to the late Mrs W. The 2021 statement, for example, includes a final bonus amount of £1,411 that was applicable at the date of the statement. Similarly, in the 2022 statement Phoenix said the final bonus was £1,082. But, on both statements Phoenix explicitly state the amount of the final bonus is not guaranteed.

Although bonuses are partly based on gains within the with-profits fund, the fund doesn't function in the same way as other investment funds. Mr T has made reference to investment funds he holds and compared them to the performance on this policy. However, the amount of the bonus is not an equal proportion of the profits of the fund. Instead, the fund managers will consider the profit made within it and employ smoothing to ensure bonuses may be added in later years when markets may be underperforming.

The fund managers also have to hold themselves to the guarantees that have to be met (such as accrued bonuses) when investments are cashed in, or a claim is paid. For these reasons, the performance of a with-profits fund doesn't necessarily reflect the current performance of the stock market, or the performance of the stock market over the life of the investment.

On reviewing Mr T's comments to the view issued by our Investigator, it seems he wanted a more forensic assessment of how Phoenix calculated the final bonus. For the above reason, I don't think it would be reasonable for Phoenix to provide Mr T and the estate of Mrs W with full details of how the with-profit fund is invested. Phoenix did write to Mr T in April 2023 explaining their position about final bonuses. This may not have given Mr T all of the answers he wanted, but I consider it was a reasonable response. Phoenix also included the 2022 statement, and this provided links for Mr T to access more information about how their with-profits fund works.

It's for the product provider to decide what the bonuses should be. However, I can consider whether Phoenix treated the estate of Mrs W fairly. In this regard, I empathise with the estate of Mrs W that the claim value wasn't as high as they had expected. And I acknowledge that it will have come as a shock that the final bonus was reduced from what it was in previous years. But this is something Phoenix can do if they feel market performance is having an impact on the bonuses it could pay. So, I don't think Phoenix treated the estate of Mrs W unfairly. Phoenix consistently made it clear in regular statements that a final bonus wasn't guaranteed; they paid out the guaranteed basic sum assured and the bonuses they had previously added. In this case, Phoenix made a commercial decision, based on market conditions at the time, to reduce the final bonus on the claim.

After our Investigator issued their view, Phoenix provided an additional response from their Actuary explaining why they reduced the final bonus at the time of the claim. I sent this information on to Mr T and asked for further comments from the estate of Mrs W.

Mr T explains Mrs W passed in March 2023 and believes the submission made by Phoenix that bonuses were reviewed in July 2023 isn't relevant. I acknowledge this comment, but in their submission, which I provided to Mr T, Phoenix explained that at a review in January 2023 it was required to reduce bonuses and did so again in July 2023.

Mr T says he accepts that markets can be affected by world events but feels Phoenix's smoothing mechanisms didn't help to reduce sharp falls, and there's no factual proof of the validity of the reduction provided, just words which actually suggest differently. It's not the role of the Financial Ombudsman Service to carry out audits into the management or governance of a with-profits fund, or provider. That is the role of the industry regulator, the Financial Conduct Authority (FCA). If the estate of Mrs W remains concerned that the decision not to pay a terminal bonus was unfair, or that annual bonuses should have been paid in 2023, they may wish to raise their concerns with the FCA.

My final decision

For the above reasons, I've decided not to uphold this complaint about Phoenix Life Limited.

Under the rules of the Financial Ombudsman Service I'm required to ask the estate of Mrs W to accept or reject my decision before 21 April 2025.

Paul Lawton
Ombudsman