DRN-5242910

The complaint

Mr P complains that Phoenix Life Limited ("Phoenix") unfairly removed the Guaranteed Annuity Rate ("GAR") from his pension policy without his knowledge or consent. And that Phoenix continued to send misleading annual statements for over ten years indicating the GAR was still in place, which he says misled him and disrupted his retirement planning.

What happened

The background to this complaint was outlined in detail by our investigator in her assessment, which was shared with both Mr P and Phoenix. I won't repeat that in full here, but I will provide a summary of the key points:

- In 1989, Mr P took out a pension policy with Sun Alliance that included a GAR. This GAR promised a fixed level of pension income per £1,000 of fund value, based on Mr P's age when he began drawing benefits. Phoenix later acquired certain Sun Alliance policies, including Mr P's.

- In 2008, Phoenix contacted policyholders with a proposal to remove the GAR in exchange for an immediate increase in policy value. The initial and follow-up letters invited feedback and included booklets and illustrations explaining the proposed changes. Phoenix stated that if there was sufficient interest, a formal vote would follow.

- In 2009, Phoenix launched the formal vote, offering three options: vote for the proposal, vote against it, or opt out to retain the GAR. Mr P didn't respond.

- The majority of policyholders voted in favour of removing the GAR in exchange for an immediate increase in policy value. In December 2009, the High Court approved this change through a Scheme of Arrangement. As a result, from 1 January 2010, all policies where the holder hadn't opted out – including Mr P's – had the GAR removed and the policy value increased. Once implemented, Phoenix confirmed the change to policyholders.

- The 2010 and 2011 annual statements sent to Mr P correctly reflected the increased policy value and the removal of the GAR.

- However, a system update in 2012 introduced an error, and from 2012 to 2022, annual statements sent to Mr P incorrectly showed that the GAR still applied. This was corrected in 2023, and all statements since then have correctly shown that the GAR no longer applies.

This complaint

In Mr P's 2023 annual statement, he noticed that the reference to the GAR had been removed. Concerned by this change, he contacted Phoenix for clarification and subsequently raised a complaint. Mr P said he had no knowledge of the 2008 proposal to remove the GAR and insisted that he neither agreed to it nor would have agreed had he been aware.

Phoenix responded that it had sent all relevant correspondence to Mr P's correct address at the time. As he didn't respond, his policy was amended in line with the High Court-approved Scheme of Arrangement. Phoenix confirmed that the GAR couldn't be reinstated and didn't uphold this part of the complaint.

However, Phoenix did uphold the part of the complaint relating to the annual statements issued between 2012 and 2022, which incorrectly indicated that the GAR still applied. It acknowledged the error, apologised, and offered £300 in compensation for the distress and inconvenience caused. Mr P rejected this offer, arguing that he should be compensated based on the benefits he would have received if the GAR had remained in place.

Our investigator reviewed the complaint and concluded that it shouldn't be upheld. She found that Phoenix had likely sent the relevant letters and acted fairly in removing the GAR. She also considered the £300 compensation to be a reasonable response to the misleading annual statements.

Mr P disagreed with the investigator's findings. He explained that he plans to retire within the next three years and had relied on the incorrect annual statements for over a decade, which had disrupted his retirement planning. He also claimed that, had he known about the removal of the GAR earlier, he would have transferred his policy to another provider offering better investment returns.

Mr P maintained that he was entitled to further compensation for financial loss. He argued that this loss resulted from both the removal of the GAR and a reduced transfer value, which he believed were caused by Phoenix's errors. He requested an ombudsman review and reiterated that he never received the letters about the proposal. He pointed out that he has always kept all correspondence from Phoenix – so if he had received the letters, he believes he would still have them.

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've considered all relevant laws, regulations, regulatory rules, guidance, standards, and codes of practice, as well as what I believe represented good industry practice at the time. Where the evidence is unclear or conflicting, I've made my decision based on the balance of probabilities – that is, by weighing the available evidence and surrounding circumstances to determine what I believe is more likely to have happened.

I'd like to clarify that the purpose of this decision is not to address every individual point raised by the parties. If I haven't commented on a specific issue, it's because I don't believe it has a material impact on the overall outcome of this complaint.

Phoenix's proposal to remove the GAR

It doesn't seem fair – or potentially enforceable – for Phoenix to have unilaterally removed the GAR from relevant pension policies. To ensure fairness, Phoenix needed to clearly explain the proposed changes and available options to policyholders.

There's no requirement for businesses to send such proposals via recorded delivery or to follow up with alternative methods, like phone or email, if no response is received. In my view, using standard post is acceptable. However, I would expect more than one letter to be sent, as a single letter could easily go astray, whereas multiple letters are far less likely to *all* be undelivered.

Although Phoenix no longer has copies of the actual letters sent to Mr P, I've reviewed templates of:

- The initial and reminder letters explaining the proposal;
- A booklet outlining the proposed changes and options available;
- A sample illustration showing how the changes would affect the policy; and
- A template of the letter explaining the voting process and available options

Phoenix sent a total of three letters to all relevant policyholders, including Mr P, between 2008 and 2009. These were internally labelled as the 'appetite', 'notification', and 'vote' letters. Based on these templates, I believe the actual letters and illustration sent to Mr P likely contained the same information. Together, these letters clearly explained:

- What the proposal was and why it was being made;
- The potential impact on the policy;
- The benefits and risks involved; and
- What would happen if the proposal was approved by policyholders and the High Court

Policyholders were given three clear options:

1. Vote in favour of the proposal;
2. Vote against it; or
3. Opt out to retain the GAR

This meant that any policyholder who wanted to keep the GAR could do so by actively choosing that option. Given this, I'm satisfied that Phoenix followed a fair process and provided policyholders with enough information to make an informed decision.

Removal of the GAR from Mr P's policy

The central issue in Mr P's case is his claim that he never received any of the communications from Phoenix regarding the proposal to remove the GAR from his policy.

While I cannot confirm whether Mr P received the letters, Phoenix has provided records showing that the correspondence was sent to his correct address at the time. Although it's always possible for a letter to go missing, I find it unlikely that all three letters – each correctly addressed – would have failed to arrive. This is especially so given that Mr P confirmed he received other correspondence from Phoenix, such as annual statements, sent to the same address both before and after the 2008–2009 proposal and vote.

On that basis, I conclude that Phoenix did send the required information and that, on balance, Mr P likely received at least one of the letters. Since he didn't opt out of the proposal, I consider it reasonable that Phoenix proceeded to remove the GAR from his policy in line with the approved Scheme of Arrangement.

Misleading annual statements sent to Mr P

It's not in dispute that Phoenix issued incorrect annual statements between 2012 and 2022, which wrongly indicated that the GAR still applied to Mr P's policy. However, the repeated provision of incorrect information doesn't mean Phoenix is required to reinstate the GAR, nor does it entitle Mr P to compensation on the basis that the GAR still applied.

As I've explained above, I'm satisfied that the GAR was fairly removed from Mr P's policy.

Therefore, I don't believe his complaint should be upheld on the basis that the GAR remained in place. That said, Phoenix's errors in issuing misleading statements for over a decade are not without consequence.

When a business acknowledges shortcomings in how it handled a situation, we consider what the consumer's position would have been had things been done correctly. The purpose of compensation is to put the consumer back in the position they would have been in if the mistake hadn't occurred.

This includes assessing both financial loss and any distress or inconvenience caused. I've considered whether Mr P suffered any financial loss as a result of Phoenix failing to provide accurate information about his policy between 2012 and 2022. Mr P has argued that he should receive redress for this. However, even when mistakes are made, compensation is only due if a financial loss has actually occurred. Our role is not to punish or fine businesses for errors.

On the question of financial loss, I make the following points:

- As previously explained, I don't believe the removal of the GAR in exchange for an increased policy value was unfair.

- Mr P has said that, had he known earlier that the GAR had been removed, he would have transferred to another provider offering better investment returns. However, any alternative pension would also likely have been invested in the markets, and it's not possible to say how it would have performed compared to the Phoenix policy.

- Mr P suggested he would have transferred out when his Phoenix policy was at its highest recent transfer value. But this is a view formed with the benefit of hindsight.

Overall, I've not seen any evidence that convinces me Mr P suffered a financial loss as a result of the misleading annual statements.

Regarding distress and inconvenience, I accept that Mr P experienced confusion and upset – particularly when he received the 2023 annual statement, which made no reference to the GAR. This was in stark contrast to the statements issued between 2012 and 2022, which wrongly indicated that the GAR still applied. His confusion in these circumstances is entirely understandable.

However, this needs to be weighed against the fact the 2010 and 2011 annual statements correctly showed the GAR had been removed and that the policy value had increased significantly – from £13,888 in 2009 to £39,902 in 2010. In my view, such a substantial increase in fund value would likely have prompted Mr P to examine the statement more closely. Notably, most of the second page of the 2010 statement included information about the Scheme of Arrangement and the reason for the increase in policy value. This included a clear statement: *"A guaranteed annuity rate no longer applies to the part of your policy included in the Scheme".*

Phoenix acknowledged its error in issuing misleading statements between 2012 and 2022, apologised, and offered £300 in compensation for the distress and inconvenience caused. I understand Mr P remains dissatisfied, but in the circumstances – and for the reasons I've outlined – I don't believe Phoenix needs to do anything further, beyond settling the £300 it previously offered Mr P.

My final decision

Based on the reasons set out above, my final decision is that I don't uphold Mr P's complaint. If it hasn't already done so, Phoenix Life Limited should pay Mr P £300 compensation. in line with its previous offer.

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