

The complaint

Mr G complained about Phoenix Life Limited (Phoenix). He said it provided an incorrect surrender value for an endowment policy that he took out with it. He said this was used in a divorce settlement and he has since received less. He said Phoenix made a mistake when it gave him an incorrect surrender value, and he should be compensated by it for this.

What happened

Mr G took out an endowment policy with Phoenix in 1998. He requested Phoenix give him the surrender value for the policy, in order that he comply with the legal requirement to disclose financial assets for his divorce.

Mr G said Phoenix provided a surrender value of £20,000.00 and guaranteed maturity value of £42,981.71. Mr G said these figures were used in a financial settlement negotiation in July 2023. But when the policy subsequently paid out, the value was £16,895.99.

Mr G said as a consequence of the information provided by Phoenix being incorrect, he suffered a financial loss of either £3104.01 or £26,085.73. He said he would like Phoenix to compensate him for his loss.

Phoenix said in response that it did issue an incorrect surrender value to Mr G in August 2022 of £42,981.71. It said it was sorry and upheld his complaint. It said though, that it went on to write to him again where it said it provided the correct surrender value. It said the much higher figure quoted was an anomaly and system error.

Phoenix said it would like to offer £400 as an apology for the distress and inconvenience caused by its error due to the quote it made in the letter it sent on 8 August 2022 and Mr G's loss of expectation.

Mr G was not happy with Phoenix's response and referred his complaint to our service.

An investigator looked into Mr G's complaint. He said he couldn't conclude the two mistakes made by Phoenix led to a financial loss for Mr G. He said he felt Mr G, or the solicitor could have clarified with Phoenix what the maturity value was before submitting the value as part of negotiations. He also concluded that there must've been a later negotiation as a September 2023 letter from Phoenix was on a schedule of assets, submitted by Mr G. He said Phoenix corrected its stance regarding the two mistakes in this September 2023. He finally concluded that he felt the offer of £400 for distress and inconvenience was fair and reasonable.

Mr G was not in agreement with the investigator's view. He said he was not satisfied with the conclusion that the investigator reached and didn't think it was a fair outcome.

Mr G said the guaranteed figure provided in June 2023 immediately prior to the hearing was £20,000.00. He said he seeks as a minimum £3104.01 representing the difference between this and what he received.

Mr G said the hearing before a judge to consider the financial dispute resolution took place on 26 July 2023, and a full and final agreement took place at that hearing. That agreement was made into a final court order immediately thereafter.

Mr G said there were no subsequent negotiations after this date. He said Phoenix's offer of a desultory £400 does not cover his direct losses nor consider the impact to him personally.

Because the parties are not in agreement, Mr G's complaint has been passed to me, an ombudsman, to look into.

I issued a provisional decision on this complaint on 6 January 2025. Both parties have received a copy of that provisional decision, but for completeness I include an extract from the decision below. I said;

"I have independently reviewed Mr G's complaint and have arrived at the same outcome as the investigator, in that I also consider Phoenix don't need to do anything further than what it has offered to Mr G, to put things right. I agree with much of what the investigator concluded but have also made additional findings about why I think nothing further is needed here. I will explain what all of my findings are, that has led to me arriving at the same outcome as the investigator.

From the outset, I considered whether I was able to look at Mr G's complaint as I am aware that what he has raised is in relation to a court order. I need to take particular care to ensure that anything I consider, hasn't already been dealt with by a court or that any of my findings don't interfere with a decision made by a court or within a court order already.

In the circumstances though, I don't think a court has decided on the merits of Mr G's complaint. Rather, his complaint is about information provided to him by Phoenix that he thinks, affected the negotiation, and has meant he incurred losses. I currently think I can decide whether Phoenix made mistakes and whether Mr G incurred losses here, without interfering with what has been decided within the court order issued on 26 July 2023. This is because, anything I decide will be about the actions of Phoenix, and if I were to agree that it was responsible for losses then it would be up to it to pay them. This would be separate from and in addition to what has been agreed within the court order. So, because of this, I have proceeded to look at the crux of Mr G's complaint.

The crux of Mr G's complaint as I see it, is that Phoenix gave him an incorrect surrender value for his endowment policy, and he used this as part of the negotiations in the financial dispute resolution hearing and this, Mr G thinks, influenced the subsequent court order in his divorce settlement. Mr G said when his endowment policy matured in November 2023, he received less, so he believes due to Phoenix's mistake, he incurred losses. I have looked into this.

I looked into the detail in relation to Mr G's endowment policy. I have looked through documentation from both parties and read letters as well as annual statements. I have also read what Phoenix has said about the incorrect surrender values it sent to Mr G in August 2022 and on 21 June 2023. I can see that Mr G's endowment policy wasn't at any stage worth £42,981.71 or even £20,000.00 and that as Phoenix has admitted, it made a mistake and sent the wrong surrender values to Mr G on those two occasions. Mr G received £16,895.99 when his policy matured on 10 November 2023. He received the correct surrender value in a letter on 20 September 2023 and within the annual statements that he received; the surrender value seemed to be similar to this figure. So, to be clear, Mr G hadn't incurred a loss when Phoenix paid to him the policy's true value, rather it had reported on two occasions incorrect surrender values to him.

Phoenix has given an explanation as to why it made these mistakes. It said it had a system fault that led to it incorrectly stating the surrender value was £42,981.71 in August 2022 and then it mistakenly reported that the surrender value was £20,000.00 on 21 June 2023 and said it took the guaranteed death benefit as the figure instead.

It has admitted it made these two mistakes, so I don't need to say any more about this other than to say, I can see it made those mistakes too and so it needs to put things right. It has made an offer of £400 to Mr G for what it says is a loss of expectation i.e., it gave the impression to Mr G for a short period that he may have been getting more than his policy was actually worth. For the distress and inconvenience that its mistakes have caused Mr G and for the reason Phoenix has stated, I think £400 is a fair offer and would be in line with the sort of award I would make in the circumstances of Mr G's complaint.

All that is left for me to consider and what is the substantive issue that is left in dispute between the parties, is whether Phoenix caused Mr G to incur any other losses, due to the mistakes that it said it made.

Mr G said it did. He said his legal representative used the £20,000.00 surrender value figure given incorrectly by Phoenix on 21 June 2023 as part of negotiations in his divorce settlement. He said the surrender value at that time and at maturity was actually £16,895.99. He also mentioned the much earlier incorrect figure of £42,981.71 quoted by Phoenix in August 2022. He said Phoenix should pay him the difference between the surrender value figure used of £20,000.00 or the higher figure quoted in August 2022. He said Phoenix had caused him to incur what was a real financial loss, as the incorrect figure was taken into consideration, rather than the lower correct figure.

I don't currently think though that Mr G has incurred any loss here and I will explain why. Before I do that though, I do need to mention a couple of points about the financial details sheet that Mr G has provided to our service, called the schedule. I can see on this form that his legal representative seems to have taken £20,000.00 as the value of his endowment policy. So, in seeing this, I think it is clear that the letter sent by Phoenix in August 2022, with the incorrect surrender value given of £42,981.71 had no bearing on any discussion. So, other than what I have already concluded about Phoenix's offer in relation to this, I don't think I need to consider this first mistake, or the higher incorrect surrender value any further.

In addition, on the schedule, on the line provided for the endowment policy in question, and next to the figure of £20,000.00 that was used as the surrender value for the policy, there are some notes. I can see that the correct surrender value of £16,895.99 is stated here with the date of the letter: 20 September 2023, that Phoenix sent to notify Mr G of its error and provide the correct information to him. This is puzzling to me because, Mr G has been clear to our service that the hearing took place, and a full and final court order was made on 26 July 2023. Presumably the schedule fed into that hearing and discussion in July 2023.

So, I understand why the investigator would draw the conclusions that he did, about perhaps a further discussion at a later date after Mr G was given a letter by Phoenix where it gave him the correct surrender value. That said, I currently don't think I need to make any findings on this for now, because I don't think Phoenix needs to do anything further anyway.

I say this because, I can see within the court order and schedule, that Mr G was able to keep the endowment policy and that it wouldn't form part of any agreement. So, although he disclosed the policy on the schedule, it didn't feature on the court order.

Instead, within the court order issued on 26 July 2023, under the heading 'declarations', it is stated that the parties agreed that neither of them had any legal or equitable interest in the property or asset in the sole name of the other except as provided for in the order. There

then was, as I have already mentioned, no provision that mentioned or related to Mr G's endowment policy in the order. The schedule additionally stated under 'other assets' that there was 'no sharing', and presumably because it was not listed in the order, this included Mr G's endowment policy.

Mr G told our service that when he gathered the financial information he needed, including the incorrect surrender value from Phoenix, that this was then used to make an overall comparison that led to a sharing of all assets including his pension. He said he would have taken a lesser cut of his pension, had phoenix provided him with the correct, lower surrender value.

I acknowledge what Mr G has said, but I currently haven't seen enough information to support what he has said here. At least not enough, that I can safely say that Phoenix's mistakes made any difference to him or the financial settlement that was made, for the reasons I have given. Rather, the court order explicitly stated that any asset not mentioned, in the sole name of either party was to be kept separate.

In conclusion, I currently don't think Mr G has incurred any losses here, but for Phoenix's mistakes. This is because the endowment policy and its surrender value, although listed on the schedule, was kept separate and not included as an asset to be shared in the court order that was issued in July 2023. This means, that although Phoenix made mistakes and undoubtably would have caused Mr G a loss of expectation in the value of his policy, its mistakes have not, on balance, caused any other losses. It has offered to pay £400 due to the distress and inconvenience it has caused and I think this is a fair offer. So, my decision is that Phoenix Life Limited should pay Mr G £400, if it hasn't paid this to him already."

I asked both parties to let me have any comments, or additional evidence, in response to my provisional decision.

Mr G has not responded to my provisional decision by the deadline I set.

Phoenix responded on 9 January 2025 and said it had no further comments to make.

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.

Neither party has anything further to add that I feel I need to comment on or that will change the outcome of this complaint. So, because of this, I don't see any reason to depart from my findings within my provisional decision. So, my decision is that Phoenix Life Limited should pay Mr G £400, if it hasn't paid this to him already.

My final decision

My final decision is that Phoenix Life Limited should pay Mr G £400 for the distress and inconvenience it has caused, if it hasn't paid this to him already.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 19 February 2025.

Mark Richardson
Ombudsman