DRN-5465562

The complaint

The estate of Mrs R ("the estate") complains Phoenix Life Limited ("Phoenix") paid out too little on a with-profits life policy taken out in 1991 ("the 1991 policy").

What happened

The 1991 policy was taken out by Mrs R with a firm whose business Phoenix later took over. Phoenix at that point took on responsibility for the policy and for that predecessor's firm's acts relating to it. In this decision when referring to acts or omissions of Phoenix or to acts or omissions of the predecessor firm for which Phoenix took on responsibility, I've just referred to 'Phoenix' for simplicity.

According to its schedule, the 1991 policy started in March 1991. Its sum assured was £405 and bonuses could be added to this. The sum assured was payable on death of the assured.

There was no end date for this cover. The premium was £3 every four weeks. The schedule says this had to be paid until March 2011, 20 years after the start date, or until the death of the assured if earlier. What we have of the schedule doesn't say what benefit will be paid if premiums stop before 20 years.

A premium payment schedule for 1996 and 1997 shows premiums paid up to 2 June 1997. A letter from 2000 claims a letter was sent in 1997 to say premiums could no longer be accepted. On this basis premiums stopped after just over six years rather than 20. Phoenix says £241.40 was paid in total, based on its manual calculations.

A letter from 2000 for the policy also says: *"As you know we are adding regular bonuses each year, and your policy still provides you with life cover protection."*

It also says: *"…premiums which have become due since we stopped accepting your payments, will be deducted from the proceeds when a claim is made."*

Phoenix says the policy wasn't eligible for bonuses in its early years but was awarded six annual bonuses of £24.60 which were added to the sum assured for the years 1995 to 2000 inclusive, with an extra £19.50 added in 1996, making £167.10 in total. Phoenix says no regular bonuses were declared for the policy after that and that once the premium payment term ended in March 2011 the policy was no longer eligible for further bonuses.

Statements on file show a final bonus attaching to the policy at some points but none was applied at the date of the claim.

The complaint arose when the estate claimed on the policy following the death of the assured. Phoenix offered the estate a policy value of £30.50. The estate rejected this, noting it was much lower than that offered by Phoenix on other policies it had seen – in particular a policy that started in June 1980 ("the 1980 policy") for which Phoenix paid £1687.83. This policy had received payments in of £222.08 according to its chargeable gain certificate. With this in mind, the estate challenged the value Phoenix had offered for the 1991 policy.

Phoenix rejected the complaint, pointing out the two policies were different but offering the estate an extra £100. Phoenix later offered a further £100 to settle matters (£230.50 in total).

Phoenix's original policy value offer of £30.50 was arrived at on the basis that the sum due was the sum assured of £572.10 less outstanding premiums of £541.60.

Our investigator accepted this but then wanted sight of policy documentation to show the provision that allowed Phoenix to make the deduction for unpaid premiums. Phoenix couldn't show us this because it said the age of the policy, which started more than thirty years earlier, meant it no longer had the policy documentation.

In view of this Phoenix decided to offer to pay a value calculated without a deduction for unpaid premiums – and pay 8% interest on the sums that were due. On 27 February 2025 it offered the estate £790.22, made up as follows:

A policy value payment of £708.70 comprising:

- £572.10 sum assured; plus
- £167.10 bonus; minus
- £30.50 deducted for £30.50 it had already paid.

Plus interest of £81.52 on £708.70 from May 2023 to February 2025 at 8% a year.

The estate pointed out that it had not cashed the cheque for the £30.50 but had returned this, so no £30.50 had been paid yet. Our investigator agreed that on that basis the £30.50 would need to be added back into the calculation. Phoenix accepts this is the case, so this should no longer be deduced from Phoenix's offer. This would make Phoenix's offer £739.20 as confirmed by Phoenix to us in its email of 17 March 2025 (plus 8% interest from the 2023 claim date to now). This is an increase from its offer of £230.50 which was withdrawn.

The estate has rejected this increased offer. I've considered all the estate's points and having done so the main ones in my view can by summarised as follows:

- Phoenix haven't produced the terms and conditions, which may have been lost during an earlier takeover, so it can't prove it is abiding by them. Given this uncertainty, the value paid out should be like the values paid by Phoenix on other policies the estate has seen.

- In June 2000 the policy was valued at £572.40. The 1980 policy was valued at £946.85 at that time and paid £1687.83 in June 2023. Using the same 1.783 growth factor would increase the £572.40 to £1020.59. The estate would agree to settle things on this basis.

- The value of the 1991 policy may be too low because too few bonuses were added. It was worth £572.40 in June 2000 but yearly bonuses stopped suddenly after that. The policy terms indicate bonuses should have been added each year. Phoenix agrees none were added but is this how all similar policies were treated? No final bonus was added to the policy either despite final bonuses of £124.24, £160.70 and £362.59 being attached at various times and a final bonus was added to what was paid out on the 1980 policy.

- A policy that started in 1973 had a sum assured of £29.60 and received a total of £26.40 as at 1994 at 10p every four weeks. Its basic claim value in 2023 was £400.65.

- Phoenix's £541.60 unpaid premium deduction may have been wrongly input when the information was digitised. The figure didn't add up if £39 were payable yearly until the claim date 25 years later. The deduction was also much larger than the deduction for the 1980 policy and no deduction was made on the 1973 policy last paid 29 years earlier.

Our investigator's view didn't change, so the matter 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.

Having done so I've arrived at the same conclusion as our investigator for largely the same reasons. In short, I conclude that the offer made by Phoenix is fair. What the estate has said doesn't persuade me that Phoenix ought to offer more. I'll explain my reasoning briefly.

Phoenix hasn't been able to provide the policy terms, so there is some uncertainty as to how these might have worked here. I gather this is partly why Phoenix made the offer it made. I agree there is some uncertainty, as what we have of the schedule doesn't say how the policy benefit is calculated if premiums stop.

I'm satisfied from the evidence that premiums did stop early in June 1997 and that this was because Phoenix stopped accepting them at that point – so it was something decided by Phoenix at that time rather than by Mrs R. The policy schedule said premiums were payable until March 2011, so any unpaid premiums would be calculated only up to that date. They would have gradually built up from June 1997 until then. Roughly fourteen years payments of £39 were unpaid, or about £546. On this basis the £541 calculated by Phoenix for unpaid premiums is in line with the sort of figure I would expect. So what the estate has said about this doesn't make me think Phoenix made an error or ought to offer more than it has.

Where one pays fewer premiums, one would usually expect to receive less in the way of benefit. What Phoenix has offered is a sum that reflects the guaranteed sum assured with some allowance for bonuses. This is the minimum one would have expected to receive from the policy in return for paying all the premiums – but here no more than six of the 20 years' premiums were paid in full. With that in mind, like our investigator, my starting point is that the sum Phoenix has offered to pay doesn't seem unfair. Indeed, on the face of it, Phoenix appears to have acted generously and given the estate the benefit of any doubt.

In saying this I note that bonuses were not added after 2000 but I don't agree with the estate that the increase of the sum assured by the addition of a bonus was guaranteed to happen every year or by a material amount. I say this because what I've seen doesn't suggest to me that these were guaranteed in that way. The schedule only promises *"such bonus additions thereto as are declared out of profits"*. It doesn't say that such declarations will be annual or are guaranteed to happen. Likewise, I've seen no provision guaranteeing a final bonus.

Generally final bonuses are added where returns on the investor's contributions exceed the benefits already added to or guaranteed by the policy. In this case, as I've noted, the policy received only a fraction of the payments that were expected when the guaranteed benefits were promised at the outset.

The estate suggests the 1991 policy value be based on the return or rate of return made by the 1980 policy. I've thought about this carefully.

The policy schedule for the 1980 policy says its sum assured was £222 and bonuses could be added plus there was £47 more that was adjustable if life assurance premium tax relief rates changed. The premium was £1 every four weeks and had to be paid by the assured for 20 years. So when premiums stopped in 1997, it had received payments for around 17 years out of 20. So around £221 had been paid to it at that point and around £39 was left to pay (which is coincidentally the same as one year's premiums for the 1991 policy but that is pure coincidence and nothing hangs on this).

The 1991 policy received around £240 in premiums which is a little more than £221. But it ran for eleven fewer years so had less time to grow. The years it missed included the 1980s which was a good period for returns. So I expect Phoenix achieved more growth on what was paid to it for the 1980 policy than it did on what was paid for the 1991 policy, allowing it to pay out a higher amount in 2023 for the 1980 policy.

Also I expect the notional cost of providing life cover on the 1980 policy was less overall than for the 1991 policy, allowing Phoenix to pay more out on the 1980 policy. I say this as the initial life cover on the 1980 policy was £269 in total compared to £405 on the 1991 policy. I note that the 1980 policy provided cover for longer but that extra cover period was at a younger age and life cover costs are cheaper at younger ages.

So a combination of a shorter period for growth and higher life cover deductions on what were roughly the same premiums paid, could well account for the 1980 policy producing more than the 1991 one. The estate doesn't challenge the idea that it was fair to pay out more for the 1980 policy than Phoenix has offered for the 1991 policy. What it suggests is that the 1991 policy value should be calculated by assuming it ought to have grown at the same rate from June 2000 onwards as the 1980 policy did. This was growth from £946.58 quoted in June 2000 to £1687 paid out in 2023 – a growth factor of 1.783. On this basis the 1991 policy value which was quoted at £571.40 in June 2000 would have been £1020.59 in 2023, which is somewhat higher than the £739.20 Phoenix has offered.

The two policies did run alongside one another for the same period from June 2000 until 2023, but I don't think it follows from this that they both ought to have grown at the same rate over that period. I say this bearing in mind that the June 2000 letter that set out the values of £571.40 and £946.58 above also said below these: *"Because we have stopped collecting small premiums, we have not received any money for [the two policies] since June 1997. The amount of unpaid premiums from this date will be deducted when a claim is made."*

The unpaid premium amount for the 1991 policy at that stage was £118.60 according to another June 2000 statement – which is about right as around three years premiums had not been paid from July 1997 until then, at around £39 per year or £117 in total. So the adjusted value in June 2000 of the 1991 policy was actually around £454. The adjusted value of the 1980 policy, which had missed around £39 in premiums at that point (£38.90 says the 2023 maturity paperwork) would've been around £907.58 (£946 - £39) and it grew to £1687 so the growth factor was actually around 1.8596. Using these adjusted figures the £454 of the 1991 policy increases at 1.8596 to £845, slightly below the £1020 figure the estate has claimed.

But the idea that the 1991 policy ought to have grown at the same rate as the 1980 policy overlooks that no more premiums were due on the 1980 policy after June 2000 whereas more were due on the 1991 policy each year until March 2011. So the unpaid premium figure for the 1980 policy remained constant after June 2000 (the 20 year anniversary of the policy) but for the 1991 policy it grew each year until 2011. In 2001 the unpaid premium figure for the 1991 policy would've grown from £117 to £156, for example, whereas it would've still been £39 for the 1980 policy. I don't think it is surprising if a value from which an increasing deduction is made each year, grows more slowly than one where the deduction doesn't increase each year and was a smaller deduction to start with.
I'd add that slower growth for the 1991 policy after 2000 might also be understood as a result of policy premiums stopping early, meaning that the cost of providing the initial sum insured impacted policy growth for longer than was expected at the start. The result would be that the cost of life cover would be more of a drag on growth for longer.

To explain this in simplified terms, the cost of the life cover depends on the sum at risk. This can be thought of as the difference at any point between the amount the insurer will pay and the value of the premiums the insurer has received in return (or the notional policy value). The sum at risk can reduce over time. For example, the 1991 policy promised £405 on death at the start, and after one £3 premium the difference between this and the premiums paid was £402. Three years later after £117 in premiums, the difference was only £288.

If the sum at risk reduces as more premiums are paid and more growth is achieved, the cost of providing the life cover can reduce – so life cover costs become a decreasing drag on policy growth. Stopping premiums early could slow or reverse this process. For the 1991 policy, premiums ended in 1997, much sooner than expected, and after only six of the 20 years, which may have slowed or even reversed this process.

I make these observations not to explain in detail the actual mechanics of the 1991 policy, but to illustrate that there are factors that could reasonably result in one policy growing at a different rate to another over the same period. It is factors such as these that Phoenix could legitimately take into account when allocating bonuses, including final bonus.

In light of this, it seems to me there are grounds to suppose Phoenix was not being unfair in not offering for the 1991 policy a value equal to its June 2000 value uprated at the rate of the 1980 policy over that period.

Overall, I don't think a comparison and consideration of the two policies shows that £739.20 is too little for Phoenix to pay out on the 1991 policy.

So having considered all that the estate had said, my view remains that the £739.20 offered by Phoenix is fair in all the circumstances and gives the estate the benefit of any doubt.

I note that Phoenix withdrew its offer of £200 for inconvenience when it made its new offer. I'm unable to make an award to the estate for inconvenience, so I make no award for that.

My approach to this complaint has been to take as my starting point the settlement Phoenix offered, rather than asking it to commission fresh enquiries into the workings of the policy. I've taken this approach bearing in mind the element of uncertainty that arises from the time that has passed and the missing documentation, but also our service's overarching purpose which is to resolve certain disputes quickly with the minimum of formality on a basis that is fair and reasonable. I'm satisfied my approach here does that.

So on the basis I've set out and for the reasons I've given above, I uphold this complaint.

Putting things right

To put things right Phoenix Life Limited should:

Pay the estate of Mrs R £739.20, representing the sum it offered the estate as the 1991 policy claim value; and

Pay simple interest on this claim value figure at the gross rate of 8% from the date the claim value became due (which based on its original offer I gather was in May 2023) until the date the redress is paid.

My final decision

For the reasons I've given, I uphold this complaint.

Phoenix Life Limited must put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs R to accept or reject my decision before 24 May 2025.

Richard Sheridan
Ombudsman