

The complaint

The estate of the late Mr L has complained about Phoenix Life Limited's ('Phoenix') administration of the late Mr L's life assurance policy.

The estate of Mr L is being represented by the late Mr L's son, Mr L. For ease of reading, I will refer to the late Mr L as 'Mr L1' in my decision.

What happened

Mr L1 held a regular premium whole life assurance with Phoenix since 1968. After Mr L1's death Mr L contacted Phoenix about a claim on the life assurance policy in December 2023.

Mr L became concerned about the poor administration and the delay in receiving correspondence and confusion of valuations.

Mr L raised his concerns with Phoenix who responded to the complaint on 28 May 2024. It said;

- After being notified of Mr L1's death it wrote to Mr L on 26 December 2023 with the claim requirements which it received on 1 March 2024 but the identity check for Mr L didn't pass.
- It wrote to him on 2 April 2024 with a list of further requirements which was still outstanding.
- It upheld the complaint as it said its letter of 8 March 2024 could have been sent sooner and it apologised.
- There was a penalty charge on the policy because capital gains tax ('CGT') was applicable to the policy.

Mr L didn't receive the above response until 23 August 2024 and replied. He wrote to Phoenix to say neither the late Mr L1 nor his estate was subject to CGT and he wanted the monies reinstated. And he wanted to know why the date of death valuation of 31 October 2023 was less than the value given on 16 December 2023. He said he would address the outstanding identity paperwork when those two issues were resolved.

Mr L didn't receive any response from Phoenix so wrote again on 18 October 2024. He questioned what was meant by upholding his complaint and whether the estate would receive any financial compensation plus interest. He wanted the CGT of £6,630.27 repaid and a reason why there was a difference in values of the policy between October and December 2023 didn't reflect the broader markets.

Mr L was then told that one of the investments held in the policy had ceased in 2022 but was still showing on the valuation.

Mr L brought his complaint to the Financial Ombudsman Service. Our investigator who considered the complaint didn't think Phoenix needed to do anything more;

- She was satisfied Phoenix applied the correct valuation when calculating the policy claim – the date of death.
- The statement sent on 16 December 2023 was misleading but didn't impact on the payout. This service couldn't award compensation for distress or inconvenience for a complaint brought on behalf of an estate. Phoenix didn't need to do anything more.
- The reduction caused by CGT related to the disposal of the underlying units in the investment funds which Phoenix was liable for as policy provider. It wasn't applied to the estate but to the fund. This could have been explained clearly at the outset.
- The deduction would apply regardless of Mr L1's personal tax status and she hadn't seen anything to suggest the deduction was miscalculated or incorrectly applied.
- There was reference to one of the funds ceasing to exist but Phoenix had explained this was a reporting issue rather than a reflection of how the money was actually invested.

Mr L didn't agree with the investigator. He said;

- This service concluded it was acceptable for Phoenix to delay while retaining the claim monies and earn interest. He first raised his issues on 22 February 2024 and it was only in July 2025 he received an answer about the 'penalty'.
- He questioned why the investigator hadn't asked Phoenix to pay interest on the policy proceeds since 22 February 2024.
- It had been stressful for him and everyone connected to his father's estate and more than an 'inconvenience'.
- Unless Phoenix was penalised by having to pay punitive damages in addition to the interest for the inexcusable delays, its customers would be disadvantaged.
- He asked why Phoenix had only recently sent him HMRC guidance rather than a year ago when he raised the query about tax.
- He asked why the investigator hadn't asked Phoenix more about the reporting error in the underlying investment.
- In order for the claim to be paid out he needed to provide a certified or original copy of cancelled or voided cheque. He didn't have a cheque book and asked whether this just caused delays while Phoenix retained the claim proceeds.

As the complaint remains unresolved, it has been passed to me for a decision in my role as ombudsman.

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.

After doing so, I've reached the same conclusions as the investigator and broadly for the same reasons. I'll explain why.

We provide an informal complaints handling service and this is reflected in the way I've approached the complaint. It's part of my role to identify and concentrate on the core issues I need to address in order to reach a fair outcome. This means I won't necessarily mention everything Mr L has brought to my attention and I've expressed some of his concerns in my own words. But I will comment on everything that makes a difference to the outcome of the

complaint. And when I am presented with information or evidence that is incomplete or contradictory, I have to base my decision on what I consider to be the balance of probabilities and what I think more likely happened.

I should first explain I can't award 'punitive damages'. That is the role of the regulator, the Financial Conduct Authority ('FCA'), and not for this service. This service only considers individual complaints and on their own particular merits.

The payment of capital gains tax

Mr L highlighted that when Phoenix issued its valuation of the plan on 16 December 2023 it said 'On death, we will pay the Plan Value' without any reference to any 'penalty' on that amount. Mr L was later advised the valuation of the policy on the date of Mr L1's death was £39,09.44 and that a 'penalty' would be deducted and the resulting plan value was £32,466.17 which gave rise to the complaint. But the 'penalty' was in fact capital gains tax incurred by the fund and not Mr L1's estate.

This means Phoenix hasn't taxed the late Mr L1's policy proceeds. It has sold the required units in the late Mr L1's fund in order to pay the policy claim. With unit-linked policies such as these, Phoenix owns the investment in the units, not the estate. This means that upon disposal, Phoenix incurred a CGT liability and it can deduct that from the amount it pays out as a claim.

Phoenix hasn't been able to give us a copy of the policy terms that applied when Mr L1 took the policy in 1968. But it has been able to give us a sample policy document from a 1965 whole of life assurance policy application. And I think it likely Mr L1 would have seen the same or similar when applying for his policy. The 'Privileges and Conditions' for the 1965 policy say;

'13. In the event of capital gains or other tax on the increase of value of the Units allocated to this Policy becoming payable by the Company, an appropriate adjustment will be made to the benefits under the Policy.'

The policy terms allow for the deduction of a CGT liability incurred by the company as a charge whenever proceeds are due from the policy, irrespective of the cause. This is clear from the extract above 'Privileges and Conditions' which I am satisfied would most likely have applied to Mr L1's policy.

And I also note the letter of the valuation of 16 December 2023 also said;

'Your Plan value as at 16 December 2023

Please note that the values shown below do not take into account any deduction that may have to be made when the Plan ends to pay our liability to tax on capital gains.'

Phoenix has also recently sent to Mr L details of the HMRC website page that refers to this, but I also include it here;

'CG69080 - Payments made under life insurance policies linked to unit trusts

Life insurance companies may offer life policies in which the value of policy benefits is linked to the value of units in unit trusts. When payment is made under such policies, the company first deducts a notional Capital Gains Tax deduction so that the policy holder receives a net amount. What has happened is not usually apparent as the unit value is struck net of Capital Gains Tax. But a specific notional deduction for

Capital Gains Tax is sometimes made, generally in the case of older policies written in the 1970s and early 1980s. The policy holder often questions the correctness of this action or claims a refund of the tax.

With a unit-linked policy, it is the insurance company which owns the investment in the units, not the policy holder. On the disposal of those units, the company is liable to Capital Gains Tax in the normal way. Only a net amount after accounting for tax on disposal of the units is available for the policy holder. Since the tax is the liability of the company and not of the policy holder, it cannot be refunded to the policy holder even if his/her annual exemption is unused or if the gain on the disposal is exempt.'

While I agree the above could have been provided by Phoenix to Mr L much earlier, this guidance is clear in explaining how only a net amount after accounting for CGT on disposal of the units is available for a claim.

While I appreciate Mr L's confusion in that Mr L1 wasn't liable for UK CGT personally and also Mr L's frustration in the delay in being informed of the reason, but Phoenix was acted correctly when accounting for the CGT, so I don't find it has done anything wrong here.

The valuations sent after the death of Mr L1

Mr L informed Phoenix of his father's death on 12 December 2023. Phoenix then sent to Mr L1 the valuation dated 16 December 2023 showing a value of £43,275.03. However, I assume the valuation was sent because the administration of the late Mr L1's death hadn't prevented the automatic annual valuation being produced four days later. But I can appreciate the updated valuation compared to the valuation as at the date of Mr L1's death would have caused confusion to the estate.

But it looks likely the increase in the plan value between 31 October 2023 and 16 December 2023 was because of an increase in the value of the underlying units. But the estate wouldn't be entitled to benefit from that increase as the underlying units would be valued and sold at the date of death.

I appreciate there was further confusion as the valuation showed a holding of JPM Multi-Manager Growth Fund A INC Accumulation units. Mr L was told that the fund had closed in September 2022. I have reviewed this and can see the JPM Multi-Manager Growth Fund A INC Accumulation Units did not close in September 2022. Instead, from what I have seen, the fund was renamed to the JPM Multi-Manager Growth Fund A (Accumulation) in September 2022. This is confirmed by information from the JP Morgan website and other fund information sources that show the fund continuing to be active under that name.

So, it looks likely Mr L was misinformed. But it doesn't explain why Phoenix didn't update the fund name for valuation purposes by changing the SEDOL number. This is a Stock Exchange Daily Official List identifying reference number and is unique to the investment. But I think it likely this was an administrative error on Phoenix' behalf, however I can understand Mr L's frustration at being given incorrect valuation information by Phoenix but there's no evidence to suggest there has been any financial impact because of this.

The claim interest

I haven't been presented with anything to show the policy claim has been paid. And I see in response to the investigator Mr L questioned why she hadn't awarded 'interest on the monies they have sat on for the past 15 months'. This suggests the claim has yet to be paid.

And in bringing the complaint to this service in June 2024 Mr L said the financial impact was the;

‘significant delay in being paid out the funds because I do not want to receive any payment until the valuations and penalty have been explained to me.’

Mr L did complete Phoenix’ Payment Instruction Form’ for the claim on 22 April 2024. In Phoenix’s response of 28 May 2024 to Mr L’s complaint Phoenix confirmed it needed further documents for identity purposes to proceed with the claim. This included an original certified copy of Mr L’s identity and either a bank statement, a printed branch statement, a letter from the bank or a cancelled/voided cheque.

Unfortunately, that letter wasn’t received by Mr L until 23 August 2024 and in response to that Mr L said to Phoenix he would deal with the required identity documents but not until his queries about the valuations and penalty was resolved.

So, there are two issues here. The delay in Mr L being told Phoenix couldn’t pay the claim until it received the correct documentation and the delay in Mr L not providing that documentation until his complaint was resolved.

I accept Mr L says he didn’t receive the letter – which I note was marked ‘file copy’ – any sooner, but I see the letter was correctly addressed to Mr L at his home address. It was also a ‘final response’ to Mr L’s complaint which under FCA rules, Phoenix had a regulatory responsibility to provide. And while Mr L says his guess is that the letter was created in August 2024 and mis-dated as May 2024, I have no reason to believe Phoenix would have done so.

While I accept some mail does go missing the majority of correctly addressed post reaches the intended recipient. Phoenix hasn’t told us of any record of returned mail. So, while I appreciate Mr L says he didn’t receive the letter, on balance, I’m persuaded that the letter in question was printed on 28 May 2024 and sent to Mr L shortly afterwards. In other words, I think it’s more likely than not, that this is what happened. And as Phoenix isn’t responsible for the safe delivery of mail, I can’t blame Phoenix for any delay Mr L experienced because of any failure of a third-party postal service.

And in response to that letter Mr L said he wasn’t willing to provide the additional identification documents until his complaint issues were resolved. But that was Mr L’s own decision. He could have carried on in making the claim and received the payout. Any complaint issues he had could still have been dealt with separately and I have no reason to think that in raising a complaint would have any impact on that payout or the amount paid.

And Mr L’s response to the 28 May 2024 letter suggests to me that he wouldn’t have gone ahead with providing the identification documents any sooner pending resolution of his complaint. So even if the letter of 28 May 2024 had been received by Mr L any earlier, I don’t think he would have gone ahead with claim any sooner than he has.

Overall, I don’t find Phoenix responsible for the delay in the claim being paid out as it was Mr L’s decision not to comply with the identification requirements. So, it’s not possible for me to identify where Phoenix may have caused any delays by either its actions or inaction over and above the delay in Mr L receiving the letter of 28 May 2024 and his decision not to proceed with the provision of the identity documents needed for the claim application.

As I can’t evidence any delays that potentially have been caused by Phoenix, it wouldn’t be fair or reasonable of me to award interest at this service’s usual rate for being out of pocket.

Payment for distress and inconvenience

I can't make an award for distress and inconvenience in this case. This is because Mr L is the beneficiary of the estate but *not* of the life assurance policy, so he is a representative for the estate but not an eligible complainant in his own right. Even if Mr L is also the beneficiary under Mr L1's will, I'm satisfied when dealing with Phoenix – and this complaint – he was doing so in his capacity as executor of the estate. He isn't a named beneficiary under the policy and was not part of the contract of insurance Mr L1 had with Phoenix.

So even if I wanted to award compensation, I cannot do so to the representative of an estate; our rules do not permit it. We are bound by the Dispute Resolution ('DISP') rules which apply to this service as set out in the Financial Conduct Authority's ('FCA') Handbook. An ombudsman is not able to avoid the rules or apply discretion to certain rules. Complaints made to this service must be pursued by an 'eligible complainant' (for example, a consumer or a micro-enterprise) and those complaints must be about acts or omissions by businesses when carrying out certain 'regulated activities' – in this case, Phoenix processing the policy and release of the funds for the late Mr L1's life assurance policy.

DISP rule 2.7.2 R allows a third party to bring a complaint on behalf of an eligible complainant (such as an investor) to this service, for example from a representative or an executor of an estate for an eligible complainant that has since died. But as explained above that doesn't mean the representative is an eligible complainant in their own right. Mr L is a representative and not a complainant in his own right.

So, though this service can make further awards for the distress a business has caused in relation to a complaint (DISP 3.7.2 R), and whilst a complaint can be made to this service by a representative on behalf of an eligible complainant – or the estate of a complainant that has passed away – that doesn't confer the right to receive a money award to the representative.

That means I even if I were minded to do so, I cannot make an award for upset, distress or inconvenience caused to Mr L in respect of his view on the perceived administrative mistakes and burdens caused by Phoenix in these circumstances. I know Mr L feels that this is unreasonable – but our rules do not allow me to consider it. If Mr L requires, our investigator can send him the link to access the relevant part of the FCA Handbook online.

Taking all the above into account, I don't uphold the estate's complaint about Phoenix. I appreciate Mr L will be disappointed in the outcome. It's clear he feels strongly about the complaint, but I hope I have been able to explain how and why I have reached my decision.

My final decision

For the reasons given, I don't uphold the estate of Mr L's complaint about Phoenix Life Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr L to accept or reject my decision before 16 October 2025.

Catherine Langley
Ombudsman