

The complaint

Mr C has complained to Phoenix Life Limited that, in 1992, the annual management charges (AMCs) on his policy were increased by 0.25% and he wasn't notified of this change.

Mr C has also complained that charges were applied to the unitised with profits section of the policy from 1992 – but the policy had no provision for management charges on this section of this policy.

Mr C has also expressed concerns over the Market Value Reduction which has been applied to his policy, saying that, as the declared bonus has matched the 4% guaranteed growth on the policy, the MVR shouldn't have increased, but it has.

What happened

On 11 August 1988, Mr C completed and signed an application form for a personal pension with Spectrum, NPI (now Phoenix Life). Mr C's policy commenced on 15 August 1988.

On 23 May 2012, 14 May 2016, 25 May 2017 and 10 October 2018, Phoenix issued annual statements to Mr C. These displayed the increased annual management charges. The annual statement was correctly addressed.

On 30 October 2024, Phoenix wrote to Mr C in response to his query about past and present AMCs. Phoenix explained that the AMC was levied against the investment fund to help meet the costs of administering the investments. The charge was expressed as a percentage and at that point was 7.75% for the initial units and 1% for ordinary units. Phoenix also said that the AMC for Mr C's product changed in 1992.

Phoenix outlined how it originally set the AMC for initial units at 7.50% for all unit-linked funds. From 1992, the AMC was 7.5% for Indexed Gilt, Fixed Interest and Deposit funds and 7.75% for all other funds including the Managed and Unitised With Profit Funds. The original terms also set the AMC for Accumulation units at 0.75% for all unit-linked funds. From 1992 the AMC was 0.75% for Index Gilt, Fixed Interest and Deposit Funds and 1% for all other funds including Managed and Unitised With Profit Funds.

Phoenix explained that policyholders would have been notified of the change at that time. Phoenix explained that a "Bid/Offer" spread of 5% on units was also applied. It explained that this was the difference between the price of buying new units and the price of selling units. Phoenix added that there was also a £1.50 monthly policy fee, which was directly deducted.

Finally, Phoenix said that charge details had been added to annual statements following regulations announced by the Financial Conduct Authority (FCA).

On 12 November 2024, Phoenix wrote to Mr C in response to a further email from him. Phoenix highlighted again that there had been a change to the charges on Mr C's policy in 1992. Phoenix said that this change was permitted under the terms and conditions, but it

didn't have a copy of the communications that would have been sent to customers affected at the time.

On 26 November 2024, Mr C referred his complaint to our service for an independent review.

Having considered the matter, our investigator thought that aspects of Mr C's complaint should be upheld. He identified that the issues which needed to be determined were as follows:

- Were all aspects of Mr C's complaint within this service's jurisdiction on the basis of timeliness?
- Had the £1.50 pm charge been fairly applied to Mr C's account?
- Could this service request that Phoenix reduce the MVR?

In terms of the first aspect, the investigator said the following:

- When considering whether this service could consider a complaint, the DISP rules as set out in the regulator's (FCA) handbook needed to be taken into account. The DISP rules include time limits. In particular DISP 2.8.2(2) says that, unless the business consents, this service cannot consider a complaint if the complainant refers it:
 - More than six years after the event complained of, or (if later)
 - Three years from the date on which the complainant became aware (or ought reasonably to have become aware) that they had cause for complaint.
- Phoenix hadn't given its consent for our service to consider this complaint going back to 1992. So the investigator said that he needed to consider whether Mr C brought this complaint to our service within the prescribed time limits.
- Mr C's complaint was that in 1992 the AMC for his policy changed. So, the date of the event complained of was 1992. This was clearly over six years ago, so the investigator said he needed to consider when Mr C ought reasonably to have been aware that he had cause for complaint.
- In 2012, 2016, 2017 and 2018 Phoenix issued annual statements to Mr C, which set out the charges applicable to his pension funds. Mr C had confirmed that he was living at the address the annual statements were posted to until 2020. Mr C had also confirmed he'd changed address four times since he took out the policy, but at each address change Phoenix was informed and changed its details accordingly.
- The investigator therefore had no reason to conclude that Mr C didn't receive the annual statements mentioned above, which confirmed the AMC. As 2012 was the first annual statement he'd been provided with which shows this, he felt that was the statement which at which reasonable awareness ought to have begun, meaning that Mr C would have had until 2015 to complain about the increase in AMCs. And so he concluded that this aspect of the complaint had been raised out of time.
- He also wasn't aware of any exceptional circumstances which might mean that this service could in any case consider the matter.

In terms of the £1.50 pm charge, he said the following:

- He'd queried this matter with Phoenix, which had said the charge wasn't on Mr C's annual statements, or within the terms and conditions of his policy. It further said that for regular premium paying plans taken out before January 1995, there was an annual policy fee of £20 per annum – or £1.50 per month.
- This fee wasn't an explicit charge and was deducted before the allocation rate was applied. It wasn't therefore detailed in the annual statements. Phoenix had also confirmed that this wasn't part of the 1992 set of charges and came from its actuarial standards manual.
- Phoenix had confirmed that this fee wasn't unique to Mr C and that other consumers were being charged this fee, and it was part of Phoenix's charging structure. Based on this, the investigator didn't think that it would be fair to require Phoenix to refund these charges for Mr C, as he couldn't say that Mr C had been treated any differently to Phoenix's other consumers.
- Furthermore, based on Phoenix's explanation, the fee had been fairly taken. However, the investigator recognised that Phoenix hadn't been completely transparent about its charging structure to Mr C – as was required of it. The investigator felt that, had the charge been outlined on Mr C's annual statement, and explained what it was for, he would have had access to the necessary information, and therefore wouldn't have needed to query the charge.
- So, the investigator thought that Phoenix should provide Mr C with £50 compensation. This was a fair figure as our guidelines indicated that this was reasonable where there had been a small administrative error.

And then finally, in respect of the MVR, the investigator said the following:

- He'd reviewed the communications with Mr C, along with the annual statements which he'd been sent in relation to the MVR, and he felt this had been explained to him in a reasonable manner. Ultimately the MVR was something which Phoenix was entitled to apply where appropriate, and if he were to ask Phoenix to reduce this, it would be unfair on other consumers for which the MVR also applied.

Phoenix has since confirmed that the £1.50 pm charge doesn't in fact apply to Mr C's policy and so, in setting out Mr C's response to the investigator's assessment and the investigator's further comments, I'll exclude that particular aspect.

Mr C said the following in response:

- He accepted the comments on the managed side of the policy and agreed that he should have noticed this earlier – he had no issues at all with that side of the policy. But with regard to the unitised with profits fund, the contract didn't show any allowance for management charges (section five of the contract) and it clearly said that, for any charges applied in the future, written notice would be provided at least three months prior to these being applied.
- Phoenix had now said that charges had been applied to this section of the policy since 1992 at the same rate as the managed side of the fund, without any written notice. This would have had a negative impact on the MVR applied to the fund.

- He'd only become aware of these charges recently and raised them with Phoenix in late 2022. He therefore asked the investigator to further look at the impact these undisclosed charges had had on increasing the MVR charges.
- Phoenix should have made him aware of the changes to the original contract and given him the opportunity to withdraw from the contract with no MVR applicable. The charges should therefore be refunded in terms of the units they would otherwise have bought.
- With specific regard to the MVR, the declared bonus for the year ending 2022 was 4% against a guaranteed rate of 4%, but the MVR increased by £2,711 (approximately 25%).
- This declared bonus was the same for the year ending 2023, but the MVR increased by £1,795 (approximately 18%).
- If the declared bonus was matching the guaranteed bonus, there seemed to be no reason for the increase in the MVR.

The investigator put these comments to Phoenix, which said that, where the growth on the policy didn't match the guaranteed 4% guaranteed growth rate, an MVR would be applied if the policy benefits were taken before age 65.

The investigator queried the additional point relating to the charges applied to the unitised with profits fund, but Phoenix answered this by repeating what it had said about the MVR.

This was conveyed to Mr C, who requested that the matter be referred to an ombudsman for review. He also said the following:

- He reiterated his point relating to the charges on the unitised with profits fund, saying that these charges went back to 1992 at 1%.
- No profit and loss figures had been provided by Phoenix to justify the increase in the MVR and previous changes in the MVR had never been so significant before.
- A 5% bid/offer spread was also levied on the purchase of units, which he'd been informed by Phoenix was for transaction fees, but included within the charges to his fund were separate transaction fees. This implied a double charge for the same action. This had been applied to both sections of his fund, and he also believed that the initial units within the fund were also used to cover fund costs as well (their value showed little increase).
- With regard to the managed fund, the figures shown in recent statements showed a higher value being taken than the 1% stated. As the pension pot value determined the unit price offered, this extra percentage being removed would affect the true unit value.

The matter has now been referred to me for review.

At my request, the investigator put the following additional points to Phoenix for its comments, to which Phoenix replied (in italics) below each point:

- Mr C had said that the declared bonus has matched the 4% guaranteed growth for 2022 and 2023, but that the MVR has increased significantly. Can it explain this or

confirm that the growth rate hasn't matched the guaranteed growth rate for these years?

"We can confirm that the 4% Annual bonus for 2024, would have been applied as this is stated within the terms of the policy. We can't change nor remove this Guarantee of 4% guaranteed growth (Applied by Annual Bonus).

The asset share for the sample policy is calculated by taking the premiums paid in, adding the investment returns earned by the fund, and taking away the charges.

We also calculate the face value of units on each sample policy. The face value is calculated using the historic annual bonuses added to the policy and, for Series I UWP Pension policies like Mr C's, the guaranteed annual unit price increase of 4% on ordinary units (units purchased after the initial year).

We decide what MVR or final bonuses to apply by comparing the asset share with the face value of the units for the sample policy. If the asset share is larger than the value of the units, we will add a final bonus so that the face value of the units plus the final bonus equals the asset share for the sample policy. If the asset share is smaller than the value of the units we will usually apply an MVR such that the face value of the units less the MVR equals the asset share for the sample policy. The final bonus (or MVR) is the percentage difference between the asset share and the face value of the units.

The second scenario is illustrated in the graph below, which shows the value of the units as the blue line, and the asset share as the orange line. The blue line is steadily increasing due to the guaranteed annual bonus of 4% but the orange line, which represents actual investment returns and charges, is not increasing at the same rate."

- With regard to the managed fund, the figures shown in recent statements showed a higher value being taken than the 1% stated. Phoenix had now said that charges had been applied to the With Profits section of the policy since 1992 at the same rate as the managed side of the fund, but without any written notice. This would have had a negative impact on the MVR applied to the fund.

"The Total Expense Ratio (TER) provides a way for the annual costs of running a particular fund to be covered. It takes all of the known costs associated with the fund's operation and expresses them as a single number, generally as a percentage, drawing its basis from the assets associated with the fund. This means that the gross amount paid by investors as the TER is dependent on the size of the fund. The funds supplied through the TER are used to support the management, trading, and legal fees associated with the fund, as well as any audit costs or general operating expenses. Any time a fund incurs higher or lower operating expenses, those changes are likely passed along within the TER."

- A 5% bid/offer spread was also levied on the purchase of units, which he'd been informed by Phoenix was for transaction fees, but included within the charges to his fund were separate transaction fees. This implied a double charge for the same action. This had been applied to both sections of his fund, and he also believed that the initial units within the fund were also used to cover fund costs as well (their value showed little increase).

"The bid/offer spread is to cover the costs for buying and selling units for the individual transactions on the policy. The 'additional' charge on the initial units is to

cover the initial costs of setting up the policy, which is spread over the term rather than a one-off charge at the start. The TER charges relate to the costs of administering the fund that the policy is invested in, the costs incurred by the fund managers.

Bid/Offer Spread - this is the difference between what we would give the customer for their units and what we charge for them and is a way of taking our fund management charges and is generally 5%.”

- With regard to the unitised with profits fund, Mr C has said that the contract didn't show any allowance for management charges (section five of the contract) and it clearly said that any charges applied in the future written notice will be provided at least three months prior to these being applied.

“As we have explained previously in 1992 there was a bulk mailing but unfortunately due to the time that has now passed we no longer have any copies.”

I issued a provisional decision on the matter on 17 September 2025, in which I set out my assessment of the complaint. The following is an extract from that decision.

“I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

And having done so, I consider that the further responses provided by Phoenix satisfy the further points made by Mr C, and which I've posed to Phoenix.

Firstly regarding the MVR, if it's the case that the actual growth hasn't matched the guaranteed growth, as has been the case here, then the MVR will be applied. And this would seem to be a reasonable course of action, and consistent with other providers' MVR policies, to protect remaining policyholders who remained invested in the fund.

Turning then to the total charges payable by Mr C, the TER referenced above would include the 1% AMC, but also all other costs associated with the running of the funds in question. And so it's possible that this can be higher than just the AMC. And within section six of the policy's terms and conditions, the provision for both “Taxes, Levies and Expenses” and “Management Charges” was set out.

The bid/offer spread has further been explained by Phoenix as relating to the individual buying and selling transactions on the policy, whereas the separate fund trading expenses would be reflected within the TER.

And finally, with regard to Mr C's comment on the lack of a provision within the policy's terms and conditions, I can see that, whilst the sections referenced above for charges were included in the “Investment Funds” section, Mr C has rightly pointed out that this was absent from the preceding With Profits section.

But Phoenix has said that this was amended by way of a bulk mailing in 1992. Mr C may not recall receiving this, but in the absence of contemporaneous documentary evidence as to whether the mailing was sent, I need to consider, on balance, what's more likely than not to have been the case here.

And in thinking about this, I think it would be unusual for a company such as Phoenix to falsely claim that a mailing was sent when it was not – this would have quite significant ramifications for a regulated entity. And I also think that, given the number of customers who would have been affected by the change, this isn't something which Phoenix would more

likely than not simply begin applying without notification, with the attendant risks of large numbers of complaints which might arise from this.

And so, therefore, on balance, I think it's more likely than not that Phoenix did send notice of the amendment to the policy terms.

However, in terms of customer service, and not least the confusion around the £1.50 pm fee, I do agree with the investigator that Phoenix should pay Mr C some compensation. And given the circumstances here, I think that £50 would be appropriate."

Mr C responded as follows:

- He asked for a copy of the graph referenced within the provisional decision.
- Phoenix wasn't in control of the policy in 1992 and would therefore be unable to say that bulk letters were in fact sent out with regards to charges being applied. If it was able to confirm this, then it should surely be able to provide a copy.
- The annual statement should have had details of the charges on the unitised With Profits side, as was the case with the managed fund.

The investigator sent Mr C the graph, but Mr C requested additional detail on the figures. Phoenix said that the graph was for illustration purposes only and didn't relate to specific figures.

Mr C then submitted the following further comments:

- He hadn't been supplied with the fund profit/losses, although he'd located what he believed to be these figures within Phoenix's website for the years 2020 to 2025 (2020 +5.5%, 2021+5.2%, 2022-10.7%, 2023+7.5%, 24+6%). These were the figures before charges.
- The increase in the MVR for that period had risen by over 15%. He therefore enquired as to how it could be feasible that, over the period 2020 to 2024, the asset value had increased by approximately 13% (before charges) but the unit price (after the MVR) had dropped by approximately 15%.
- When this policy started it was in two sections, managed and with profit. The managed section had fees detailed in line with a fund that required buying and selling stock to gain the best results available.
- The with profit section had no fees attached (only the 5% handling charge on the purchase price) and the fund acted on the profits gained from the assets within the fund.
- In 1992 it would appear that the with profit section had fees applied in line with the managed side of the fund, and prior to this time both sections of the fund were gaining a profit at a similar rate.
- After the introduction of fees to the with profit section, the comparison of profits changed quite significantly (managed rising and with profits falling to require the introduction of a MVR).
- Mr C enquired as to whether, when the management fees were introduced in 1992

this changed the with profits section to a managed fund as the fees would imply, therefore changing the expectation of the fund (buying and selling funds, not just relying on the profits).

- If the letter was sent out in 1992, surely a copy would have been saved for reference purposes. This letter was a change to the contract term and conditions and therefore a new contract should have been supplied and put on file or the mail shot letter retained as this had a signification implication to the fund profits/losses. And Mr C enquired as to why the fees were never shown on the yearly statement.
- If the fees weren't shown on the statement and the fund had run its course, then a policyholder wouldn't know that anything was wrong.
- In terms of the TER charges, the charges would appear to have been made against both sections of the fund, despite them only being detailed within the managed section of the fund (section 6 in the contract). Phoenix has been required by law to disclose all fees, and both sections of the fund have had the same set of charges applied. Mr C enquired as whether this information would also have been supplied within the mail shot sent in 1992.

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 firstly noted what Mr C has said about the with profits fund effectively becoming a managed fund when fees were applied. But I think there may be a fundamental misunderstanding as to how a with profits fund operates. Mr C has alluded to the managed fund buying and selling assets to achieve growth, and that the with profit fund instead relies on profits. A with profit fund, as with a managed fund, would also be subject to a variation of assets over time, so selling out of some and buying into others, as deemed appropriate by the fund managers.

But the fundamental difference between the two is that the former is a direct representation of the value of the assets held at a given time, whereas the latter is subject to a "smoothed" return in which profits are applied steadily to achieve a less volatile increase in the overall value. In this case, there is a guaranteed minimum 4% annual increase. But sometimes, in situations of market downturns, the underlying value of the fund may not represent the overall liability in terms of the "bonuses" (which in the case of a unitised with profits fund is reflected in the unit price rather than the addition of a monetary amount) which have been accrued by policyholders. And so, unless a policyholder is withdrawing at maturity or an MVR-free date, the MVR may apply to reflect that lower underlying value.

And so the application of fees wouldn't affect how the fund was operated. This simply reflects the costs of that operation, be it on a managed or with profit basis.

In terms of the actual gross yield on the with profit fund, and the reason for the increase in the MVR, Phoenix has confirmed that these have been as follows:

2021	-3.2%
2022	-14.3%
2023	7.5%
2024	1.3%
2025	4.1%

And so, instead of meeting the annual 4% guaranteed increase year on year, the overall gross yield over the last five years has been negative, due as a result more of the aftereffects of the pandemic and the associated impact on global financial markets, rather than the application of fees, which certainly wouldn't account for such significant declines. And the actual percentage of the MVR applicable would be at Phoenix's discretion (whilst adhering to its principles and practices of with profits financial management) to account for the asset value versus the fund's liabilities.

Turning then to the issue of the mailing sent in 1992, I've note Mr C's further comments on this, but I wouldn't agree that Phoenix would need to have retained a copy of the mailing to be reasonably confident that it would have been sent – the terms of the policy allowed for such a change, and I'd refer Mr C to my comments in the provisional decision in terms of my conclusions on it being more likely than not that a mailing was sent to policyholders.

As Phoenix doesn't hold a copy of the mailing, it can't provide the exact detail of what was included within it, but I think it's not unreasonable to maintain that it's more likely than not that Mr C would have been on notice that charges would begin to be applied on the with profits portion of his pension funds. And as opposed to those applied to a managed fund, it's historically not been uncommon for with profits statements to not show explicit charges. Rather, these – and all other expenses - are implicitly accounted for within the overall addition to the unit value of the fund. Phoenix has confirmed that the charges details have been added to annual statements in line with the change in regulations.

Therefore, for the reasons given above and in my provisional decision, my overall view on the complaint remains the same.

Putting things right

For the reasons set out in the provisional decision, Phoenix Life Limited should pay Mr C £50.

My final decision

My final decision is that I partially uphold the complaint and direct Phoenix Life Limited to undertake the above (if it hasn't already done so).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 12 December 2025.

Philip Miller
Ombudsman