

complaint

Mr C complains that Phoenix Life Assurance Limited (Phoenix Life) has said he's not entitled to the bonus a February 2014 statement said was added to his plan.

background

Our adjudicator upheld the complaint in part, saying in summary that:

- Mr C's policy didn't receive an annual bonus in 2014 as he wouldn't have been entitled to the amount in the statement unless he deferred retirement for five years;
- the statement Mr C was sent didn't represent an immediate retirement quote. It made it clear that the guaranteed pension fund quoted was *'the minimum amount of pension fund which will be available at the assumed pension date [5 February 2019] providing all future contributions are paid'*; and
- the statement was poorly timed and was sent when it wasn't necessary as Mr C had already asked to retire.

He recommended Phoenix Life add interest up to the current date to the sum already offered if this hadn't been paid and pay a further £200 in respect of the distress, inconvenience and loss of expectation that Mr C has experienced.

Mr C didn't agree, saying in summary that:

- he disputes the contents of a call recording and feels the adjudicator was prejudiced by listening to it and it shouldn't be taken into account;
- the adjudicator hasn't addressed why Phoenix Life called him on 25 February 2014;.
- the annual statement is a contract and Phoenix Life is in breach of it if it doesn't add the bonus it declared to his policy;
- Clause 5 of the policy terms and conditions states: *"This policy entitles members...to participate in any surplus...which may be distributed as reversionary additions to participating policies"*; and
- it must be tempting for Phoenix Life not to add bonuses to policies with a guaranteed annuity rate.

As the parties still don't agree, I've now reviewed this complaint.

my findings

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'm not upholding this complaint. I'll explain why but I should point that I'll be addressing only those issues I consider key to the complaint and so won't necessarily refer to all of the points raised.

It's not disputed that Phoenix Life sent Mr C an annual statement in February 2014 which said that a bonus had been added to his plan. But it's important to note that this letter was generated on Mr C's 65th birthday and presumed a deferred retirement age of 70. It appears that this was because he'd agreed to take his pension at 65 but his claim was still being processed on his birthday and so the system (incorrectly) assumed he'd deferred.

The statement contains a revised higher sum assured which would be available should he take his pension at age 70. Mr C's plan paid compound bonuses which were calculated in

such a way that a plan with a higher sum assured would be due a higher annual bonus. So if Mr C had had a plan which ran to age 70, his higher sum assured would have resulted in higher bonuses being allocated to it when they were declared. It appears that this revised level of bonus which was due to a plan running to age 70 is what was described in the statement letter as a bonus being “added in respect of 2013”.

I note that Phoenix Life made it clear in a January 2014 FAQ leaflet about pensions such as Mr C’s that their current approach was to not add any further annual bonuses. I’m satisfied that it’s more likely than not that, as it has confirmed, it didn’t then declare a bonus for these plans a month later. It’s unfortunate that the letter made it sound as if a bonus had been declared for policyholders in 2013 but I’m satisfied that this didn’t in fact happen.

Whilst I can see that Mr C feels that the statement is evidence of a bonus declaration which Phoenix Life is keeping from him, I’m not persuaded on the evidence that this is the case.

I appreciate that Mr C feels strongly that the February 2014 statement created a contract between him and Phoenix Life for the payment of the bonus as part of his 2014 pension claim. But it’s not in dispute that Mr C had asked to take his plan in February 2014 and wasn’t intending to defer. This claim was on-going at the time he received the statement and he’d agreed to take his pension then based on the sums previously confirmed to him. The February statement on the other hand clearly refers to the situation should Mr C defer to 2019. It’s unfortunate that the letter referred to the bonus as a 2013 bonus but I’m not persuaded it actually referred to a declaration and I don’t feel it would be reasonable to conclude that this letter referring to 2019 created a contract to pay Mr C this bonus amount with his 2014 claim.

I can see that Mr C has been inconvenienced and I think it’s fair that Phoenix Life should compensate him for the loss of expectation engendered by their sending the unnecessary February statement and phrasing it as they did. I agree with the adjudicator that £200 would be a fair and reasonable amount in respect of this.

I note the adjudicator also suggested that Phoenix Life pay Mr C the offer he’s accepted of around £350 plus interest in the event that it hasn’t paid already. This related to elements of his complaint which aren’t the subject of this decision. But it appears that Phoenix Life paid this amount in May 2014 and so I haven’t included this in my redress.

my final decision

My final decision is that I uphold Mr C’s complaint in part.

In resolution of this complaint, if Mr C accepts it, Phoenix Life Assurance Limited should pay Mr C £200 for the distress, inconvenience and loss of expectation he’s experienced. This is in addition to the sum of around £350 which it offered in respect of other elements of Mr C’s complaint to it.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr C to accept or reject my decision before 13 November 2015.

Helen McKenna
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