

complaint

Mr W complains, through his solicitors, that Friends Life Limited hasn't paid him all the bonuses he is entitled to under his with-profits mortgage endowment policy and that he relied upon the guidance given in the Product Particulars that the likely bonus would bear a direct relationship to the future rate of return.

background

Mr W took out an endowment policy in August 1990 which matured in August 2013 when he received £307,618. This was made up of the basic sum assured of £200,000, annual bonuses of £67,494 and a terminal bonus of £40,214.

I have issued two provisional findings on this complaint. In the first I made the following key findings:

- What Mr W was entitled to under the terms of the policy was the guaranteed sum assured along with any annual bonuses added to the policy and any terminal bonus.
- Under the terms of the policy he is entitled to bonuses declared by Friends Life after it has carried out an investigation into its financial position and acted on the advice of the actuary.
- The information I had seen in a document entitled 'Homebuilder' made it reasonably clear that the payment of bonuses isn't straightforward or dependent just on the returns made.
- The 'Product Particulars' refer to being entitled to a share of the profit of the 'Fund' but also make clear it is for Friends Life to determine what the total profit is and how that is distributed to participating policyholders.
- It is still required to treat its customers fairly.
- The 'Illustration of Future Returns' within the Product Particulars makes it clear that the likely bonus is to bear a direct relationship to the future rate of return, but that this was providing the information required by the then regulator, LAUTRO. And it makes clear that the figures quoted comply with the rate of return and 'other factors' which I think makes it clear it isn't just dependent on the rate of return.
- The basic sum assured guaranteed at maturity already allows for some investment return net of tax and account is also taken of future expenses and the cost of providing life cover under the policy.
- The return would have to be greater than what was allowed for within the basic sum assured before there was the possibility of a bonus.
- Friends Life has to take account of what guaranteed amounts it has to pay out in any given year when deciding whether to pay an annual bonus and if it decides to pay one, the amount.
- Consideration also has to be given as to what future returns might be in subsequent years given once an annual bonus is added it can't be taken away.
- Because of this, reasonable returns in certain years may only result in small, or even no, bonus payments.
- But the overall returns will still be taken into account when assessing the terminal bonus rate.
- In the documents entitled 'Your Questions Answered' it explained why no annual bonuses had been added in recent years and I think this provided a reasonable explanation as to why they weren't added. The calculation of bonus rates is complicated and involves actuarial advice amongst other things. I'm not satisfied

there is any value to me seeing the terminal bonus calculation as I didn't think I would be able to reach a fair and reasonable finding on whether the rate used was fair.

The solicitors didn't agree with my provisional decision and I issued a second provisional decision the key findings of which were:

- One of the main points made by the solicitors was that I hadn't commented on the deduction of life cover costs. I am satisfied that Friends Life was allowed to make deductions for charges and expenses from the with profits fund under the contract it had with Mr W and that it was entitled to charge more for the cost of life cover because of Mr W's age compared to someone younger.
- The £201 the solicitors have referred to as paying the life cover costs was for the decreasing term assurance which together with the sum assured of £200,000 provided the guaranteed amount payable on death at the outset.
- The amount of life cover costs Friends Life has indicated have been deducted is above the 1% referred to for charges and expenses when the policy was taken out. Friends Life is unable to say whether the 1% included life cover costs but it was only an estimate anyway.
- Based on the overall evidence I'm satisfied that the decision whether to apply a bonus or not isn't just based on life cover costs and expenses.
- I don't think Friend's Life did limit its explanation as to why there was no bonus, because it has; said at various times that lower bonuses are directly attributable to lower than expected profit; has referred to the document 'Your Questions Answered' which provided a comprehensive explanation why no bonuses were awarded that wasn't limited to life cover costs and expenses; stated that bonus levels depended on various factors and set some of these out.
- I don't think Friends Life has acted unreasonably in not disclosing the information Mr W has asked for.
- Friends Life's explanation of why it can't provide a valuation of the policy year-on-year is reasonable.
- I don't think it is unreasonable for Friend's Life to refuse to provide specific calculations how the final bonus rate of 15% was arrived at because it is commercially sensitive information.
- The calculation of bonus rates is a matter of commercial judgement which isn't generally appropriate for us to comment on.

The solicitors didn't agree with my second provisional decision and in short made the following points:

- I had provided them with further information presented by Friends Life, but it wasn't everything it provided which was only referred to in my provisional decision.
- Mr W has a clear recollection he was quoted £201 a month for the life cover of the policy, and this was his understanding and no alternative basis is stated in the documentation.
- Friends Life's deduction of additional mortality costs when calculating the terminal bonus only came to light in its letter of 22 September 2017.
- The ombudsman's finding that the £201 per month paid for life cover only covered the amount of £300,000 and there were additional life cover costs for the sum assured as well isn't supported by the documentation and hasn't been put to Mr W previously.

- Any person in Mr W's position who received a quoted premium for life insurance as part of a policy of this nature would expect the quote to cover the entire cost of life cover in the policy.
- The ombudsman's finding suggests that there was an arrangement to split the cost of insurance into a fixed monthly component that was quoted for and an unfixed component to be assessed at the end of the policy and an ordinary consumer wouldn't have interpreted the documents in such a bizarre way.
- Their calculations show the additional mortality Friends Life deducted amounted to £62,000 which equates to £159 per month in addition to the £201 when a non-smoker aged 52 now could get cover of £500,000 for a fixed premium of just over £106. So, the £201 easily covered the mortality costs so even if Friends Life were entitled to charge additional mortality costs, they had no basis for doing so.
- Can the ombudsman now confirm he has enough evidence to find that Friends Life is not entitled to make the level of deductions that it did and require it to provide details of the life insurance expenses referable to his contract.
- The ombudsman has referred to 'why Friends Life didn't apply a bonus, but this is wrong as it did apply a terminal bonus, so it isn't possible to understand the ombudsman's reasoning in this part of his findings.
- As it explained previously, Friends Life's letter of 22 September 2017 is the only evidence or explanation of the actual calculation of the terminal bonus. This makes clear that additional life cover was charged to his policy which amounted to 1.5% reduction on his return with a further 1.3% reduction for other expenses/factors. Can the ombudsman comment on the 1.5% reduction without referring to other factors which have no bearing on that reduction?
- The ombudsman has incorrectly stated that he has to be satisfied that Friends Life acted unreasonably in not disclosing information when the only requirement is to determine the complaint by reference to what is fair and reasonable.
- Mr W has never asked for valuation of the policy but instead has asked for a valuation of the fund and a valuation of its annual returns which it should be straightforward for Friends Life to provide.
- The ombudsman has said calculations of the terminal bonus are commercially sensitive and it is concerning he thinks it is fair and reasonable to encourage companies to keep their customers in the dark with respect to basic information that impacts customers lives.
- The cost of life insurance isn't commercially sensitive and if it has been overcharging it can have no basis for keeping this confidential.
- The ombudsman could receive the calculation confidentially which is what would be fair and reasonable and what we have done in other cases.
- Mr W is prepared to agree to keep the information confidential from third parties.

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 persuaded that I should depart from the main findings in my provisional decisions or change my overall decision that this complaint shouldn't be upheld.

I note that the solicitors have said that Mr W has a clear recollection that he was quoted £201 for the life cover. But memories from so long ago are unlikely to be accurate or complete so I don't think this is persuasive evidence he was misled in some way.

I'm satisfied it is more likely than not that the amount payable for the DTA was £201 so, if this figure was mentioned to him, I think it will have been in relation to this - I also think the documents in this complaint support my finding on this point.

I have only seen blank plan illustrations, but I think it is more likely than not that Mr W would've received an illustration based on the blank copy I have seen. This document includes calculations of possible future benefits based on rates of return set by LAUTRO of 10.5% and 7%, and states:

"The premium used for these calculations is £ xxxx per month/year which excludes the part of the premium which relates to the Reducing Temporary Sum Assured and (if selected) Accident Benefits."

I think this makes it reasonably clear that any calculation of possible future benefits was more likely than not based on the premium less the costs of the 'reducing temporary sum assured' – in other words the DTA.

Given this I think it is more likely than not the figure of £942.50 used in the product particulars to calculate possible future returns is the amount of the premium less the costs of the DTA. I think this is reinforced by the wording in the product particulars:

"The premium used for these calculations is £942.50 per month which excludes the part of the premium which relates to the additional guaranteed death benefit."

The description of the 'Homebuilder' plan is as follows:

"Homebuilder is a combination of a with-profits endowment assurance for a basic guaranteed sum assured (which is increased by bonuses) and a reducing temporary assurance which together provide your guaranteed minimum death benefit."

I think the wording of the documents – in particular, the use of the word 'additional' in the product particulars - makes it clear that the £201 was related to the DTA.

I have not suggested that the life cover costs for the endowment were assessed at the end of the term. The life cover costs would've been deducted from the premium on an ongoing basis, as would generally be the case for a plan that included life cover.

I note the solicitors have suggested that the additional cost of life cover was £159 each month in addition to the £201 for the DTA and says there is no justification for the amount charged.

But this is not the cost of life cover, it is the difference in return as a result of the additional cost of life cover – these are not the same thing. I have seen no persuasive evidence that Friends Life have made deductions that it wasn't entitled to make or has paid Mr W less than he is entitled to.

As for the documents that Mr W has asked Friends Life to provide, I have little to add to the findings I have previously made. The solicitors have said that I was wrong to say that I have to be satisfied that Friends Life had acted unreasonably in not disclosing information, and

that what I had to decide is if it had acted fairly and reasonably. I'm not sure there is a real distinction but for the avoidance of doubt I think it acted fairly and reasonably in not disclosing this information.

I note that the solicitors are concerned that I found that Friends Life didn't need to disclose its calculation of the terminal bonus and have referred to this as basic information. But I don't agree this is basic information. I accept what Friends Life has said about this being commercially sensitive information and I am not going to ask it to provide this to Mr W.

I note the solicitors have said that I could receive this information confidentially which they say is what our service has done in other cases. It hasn't provided details of these other cases where we have asked for the calculation, but I'm not bound by what we have done in another case and I'm not persuaded that this information would help me reach a fair and reasonable decision in this case.

The solicitors have pointed out that I wrongly referred to 'why Friends Life didn't apply a bonus' and point to the fact that the complaint is about the amount of the terminal bonus. But I made clear that what I was referring to was what the solicitors had said about Friends Life limiting its explanation for the bonus to be applied to just the cost of life cover and expenses. The solicitors had no difficulty in providing a response to what I had to say about this and explaining why they didn't agree with me.

In summary Mr W and his solicitors have provided detailed arguments why they believe Friends Life has done something wrong in calculating the terminal bonus. And I acknowledge that Mr W has strong feelings about this. But I have seen no evidence that persuades me that it is more likely than not that Friends Life did anything wrong when calculating the terminal bonus.

my final decision

I don't uphold this complaint for the reasons I have explained above and in my provisional decisions.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 24 December 2020.

Philip Gibbons
ombudsman