complaint

Mrs P complains Phoenix Life Limited (Phoenix) mis-sold her a with-profits bond that wasn't suitable for her in 1999.

background

The background and circumstances of this complaint are set out within my provisional decision of 29 January 2015. A copy of this is attached and forms part of this decision.

my findings

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

Mrs P accepted my provisional decision. Phoenix didn't offer any new arguments.

For the reasons set out in my provisional decision, I am satisfied this complaint should be upheld, and that Phoenix should pay the compensation previously outlined. This assumes Mrs P should reasonably have been advised to take a modest risk with half of her investment, but no risk with the remaining £10,000.

fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mrs P as close to the position she would probably now be in if she had not been given unsuitable advice.

I think Mrs P would have invested differently. It is not possible to say *precisely* what she would have done, but I am satisfied that what I have set out below is fair and reasonable given Mrs P's circumstances and objectives when she invested.

what should Phoenix do?

To compensate Mrs P fairly, Phoenix must:

- Compare the performance of Mrs P's investment with that of the two benchmarks shown below and pay the difference between the *fair value* and the *actual value* of the investment. If the *actual value* is greater than the *fair value*, no compensation is payable.

- Phoenix should also pay interest as set out below.

- Income tax may be payable on any interest.

a. <u>compensation for the £10,000 where no risk was wanted</u>

Investment name	status	benchmark	From ("start date")	To ("end date")	Additional interest
50% of the with-profits bond	surrendered	average rate from fixed rate bonds	date of investment	date surrendered	8% simple per year on any loss from the end date to the date of settlement

actual value

This means the actual amount paid from the investment at the end date.

fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, Phoenix should use the monthly average rate for the fixed rate bonds with 12 to 17 months maturity as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any withdrawal, income or other payment out of the investment should be deducted from the *fair value* calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on.

why is this remedy suitable?

I have chosen this method of compensation because:

- Mrs P wanted to achieve a reasonable return without risking any of her capital on 50% of her investment

- The average rate for the fixed rate bonds would be a fair measure given Mrs P's circumstances and objectives. It does not mean that Mrs P would have invested only in a fixed rate bond. It is the sort of investment return a consumer could have obtained with little risk to their capital.

- The additional interest is for being deprived of the use of any compensation money since the end date.

b. <u>compensation for the £10,000 where a modest risk was wanted</u>

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
50% of the with-profits bonds	surrendered	for half the investment: FTSE WMA Stock Market Income Total Return Index; for the other half: average rate from fixed rate bonds	date of investment	date surrendered	8% simple per year on any loss from the end date to the date of settlement

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, Phoenix should use the monthly average rate for the fixed rate bonds with 12 to 17 months maturity as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any withdrawal, income or other payment out of the investment should be deducted from the *fair value* calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on.

why is this remedy suitable?

I have chosen this method of compensation because:

- Mrs P wanted capital growth with a small risk to her capital.

- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to her capital.

- The WMA index is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.

- I consider that Mrs P's risk profile was in between, in the sense that she was prepared to take a small level of risk to attain her investment objectives. So, the 50/50 combination would reasonably put Mrs P into that position. It does not mean that Mrs P would have invested 50% of her money in a fixed rate bond and 50% in some kind of index tracker fund. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mrs P could have obtained from investments suited to her objective and risk attitude.

- The additional interest is for being deprived of the use of any compensation money since the end date.

my final decision

I uphold this complaint and instruct Phoenix Life Limited to pay Mrs P compensation as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 8 April 2016.

Tony Moss
ombudsman

Copy of provisional decision

complaint

Mrs P complains Phoenix Life Limited (Phoenix) mis-sold her a with-profits bond that wasn't suitable for her in 1999.

background

Mrs P was 66, retired and recently widowed when she met Phoenix looking to invest some money in a cautious product for medium term growth.

She had £40,000 in a savings deposit account, and was recommended to put half of this in the bond. After this investment she retained £20,000 on deposit, £4,000 in her current account and £7,000 in an ISA.

In 2015 Mrs P's representatives complained to Phoenix, and said:

- Mrs P was a vulnerable, naive and inexperienced client, and should have been accompanied by a third party
- There's no evidence as to how her attitude to risk was assessed, and this bond wasn't suitable for her
- Phoenix wrongly claimed she had sufficient funds in place to support any potential loss on her investment – Mrs P had no means of replacing lost capital
- The Key Features document doesn't mention the possibility of a market value adjustment (MVA) so Phoenix should not have applied one subsequently
- Mrs P was misled over charges and penalties

Phoenix rejected her complaint, and said:

- It had recommended the bond as a medium to long term investment, and should be kept for at least five years
- Mrs P had kept the bond for 10 years until 2010
- The money was invested in a with-profits fund considered suitable for a low risk investor
- Mrs P was given all the relevant information about charges etc. at the time of sale

An adjudicator at this service didn't feel the complaint should be upheld.

She said Mrs P had been given with the necessary information about the fund including the MVA possibility. She also felt the product was suitable for a low risk investor such as Mrs P. As no agreement has been reached, this complaint has been brought to me for review.

my provisional findings

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

Firstly, I am satisfied the documentation sets out the nature of this bond including the risks, possible returns and charges.

But I'm not persuaded Phoenix should have advised Mrs P to invest in this fund, having taken full account of her background and circumstances. I'm also not convinced Mrs P was given sufficient opportunity to consider whether she wanted to lock away such a large percentage of her money for a minimum of five to 10 years or accept the considerable costs associated with early withdrawals.

Phoenix repeatedly stated, in the course of this complaint, that Mrs P retained this bond for the full 10 year term. In my view, it gave Mrs P's representatives and the adjudicator the clear impression that she kept the full £20,000 investment for this period.

However, I discovered Mrs P withdrew half of her investment - £10,000 - within two years, and so did suffer from a charging-structure which penalised early withdrawals. It also meant she couldn't benefit from the capital guarantee which only applied if the investment was held for the entire 10 year term.

She then withdrew a further £6,000 four years later, meaning only £4,000 of the original amount was retained for the full term.

It was therefore completely misleading for Phoenix to state, without qualification, that she retained the bond for the full term.

The brief Fact Find/recommendations letter recorded: 'You can invest (*this amount*) for at least 10 years'. The fact that Mrs P withdrew half her investment within two years strongly suggests the advisor failed to identify how much Mrs P felt confident of locking away, and for what potential period or periods of time.

Mrs P was recently widowed, had no financial experience, and should have been treated with special care and attention to ensure her future financial needs were fully considered. I note in the box referring to Mrs P's objectives, the advisor had simply written 'upset'.

In this context, I cannot see why it was right to recommend she lock up any of her capital in a bond designed to be held for a 10 year period, particularly when other similarly cautious products could have offered far greater flexibility.

She also had a modest retirement income, with little 'spare' money left over each month, and so had no means of replacing any lost capital.

Overall, I'm also not persuaded the advisor took sufficient steps to identify how much risk, if any, Mrs P wanted to take with her capital. In the absence of a risk questionnaire, I've seen no evidence as to how her risk rating was established.

On balance, I feel Mrs P may have been happy to take a modest risk with some of her capital to try and provide some medium-term financial security. But I am not convinced she would have wanted to put £20,000 in a risk-based product.

My proposed compensation therefore assumes Mrs P should reasonably have been advised to take a modest risk with half of her investment, but no risk with the remaining £10,000.

fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mrs P as close to the position she would probably now be in if she had not been given unsuitable advice.

I think Mrs P would have invested differently. It is not possible to say *precisely* what she would have done, but I am satisfied that what I have set out below is fair and reasonable given Mrs P's circumstances and objectives when she invested.

what should Phoenix do?

To compensate Mrs P fairly, Phoenix must:

- Compare the performance of Mrs P's investment with that of the two benchmarks shown below and pay the difference between the *fair value* and the *actual value* of the investment. If the *actual value* is greater than the *fair value*, no compensation is payable.

  Phoenix should also pay interest as set out below.

Income tax may be payable on any interest awarded.

a. <u>compensation for the £10,000 where no risk was wanted</u>

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- I consider that Mrs P's risk profile was in between, in the sense that she was prepared to take a small level of risk to attain her investment objectives. So, the 50/50 combination would reasonably put Mrs P into that position. It does not mean that Mrs P would have invested 50% of her money in a fixed rate bond and 50% in some kind of index tracker fund. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mrs P could have obtained from investments suited to her objective and risk attitude.
- The additional interest is for being deprived of the use of any compensation money since the end date.

my provisional decision

I currently intend to uphold this complaint and instruct Phoenix Life Limited to pay Mrs P compensation as calculated above.

Tony Moss
ombudsman