

complaint

Mr J has complained about the way his 'with profits' plans with Phoenix Life Assurance Limited have performed. He says there has been no bonus or growth for around 13 years. He's also unaware of any compensation paid into the plans in 2002.

background

One of our adjudicators has written to tell Mr J that he didn't think the complaint should succeed. He explained that:

- Phoenix's with profits fund used a technique known as 'smoothing' to hold back some growth in better years, in case the values of the assets in the fund fell in other years.
- The existing guaranteed benefits built up in the fund had meant Phoenix needed to take a more cautious investment strategy.
- These two features had essentially combined to mean Phoenix didn't think it could afford to declare a further bonus for some time.
- Phoenix was entitled to exercise its own discretion on this issue. The regulators had required it to regularly publish Principles and Practices of Financial Management (PPFM) documents setting out how it used that discretion.
- Mr J's pension had been looked at under the industry-wide "Pensions Review" in 2002. This addressed whether he'd lost out by transferring and opting out of his employers' pension schemes. Phoenix had correctly investigated this and paid compensation according to guidance from its then regulator, the FSA.
- It was likely Mr J received Phoenix's letters, because he questioned its actions shortly after. So he was aware of the compensation he'd received.

Mr J didn't agree. In particular, I've listened to his phone call with the adjudicator. He said he already knew what with profits funds were, but this didn't explain why Phoenix hadn't added any bonus to his plans. He thought Phoenix shouldn't have been allowed to change its approach from adding regular bonuses to only (potentially) adding a final bonus at the end. He thought that individual complaints carried little weight with us, but we should address the wider issue.

Phoenix had nothing further to add. The case was passed to me for final decision.

my findings

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

I'm sorry to repeat some of the points I know the adjudicator has covered with Mr J already. But I have to take into account that Mr J wasn't given any overall guarantee of what he might receive at retirement. Any bonus declared is guaranteed once it's been added to the plan. And this means Mr J is protected to some extent when there are prolonged downturns in the stock market. But I can't agree that Phoenix promised Mr J a certain bonus throughout the plan's term. Any projections of future growth from the plans would have been based on the regulator's illustrated rates. These have turned out to be higher than most forms of investment have been able to achieve.

The FSA later required Phoenix to check if Mr J had lost guaranteed amounts that he could have had under his former employers' schemes. Based on the evidence I've seen, I agree that Phoenix has reviewed this matter properly under the "Pensions Review" guidance.

This guidance allowed Phoenix to automatically increase Mr J's plan value if he didn't respond to its offers of compensation. Mr J disputes that he got the offers. But I can see that Phoenix responded to a complaint from him in March 2003. This seems to have been prompted by its letter explaining the payment one week earlier. All of Phoenix's letters at that time went to the same address. On balance I think it's likely Mr J did receive the letters even if he no longer has copies.

The guidance also required Phoenix to assume his policy grew at a certain rate in future. Almost all sorts of pension funds have seen lower growth than was assumed in the Pensions Review. But the FSA didn't ask firms to revisit their calculations in light of later experience. The guidance was intended to draw a line under a large number of mis-selling claims. So there isn't a reason here for me to reopen a matter that has already been settled.

But putting aside the employer benefits he'd lost, Mr J is also unhappy that he hasn't had bonuses on his plans for about 13 years. As I mentioned, he wasn't guaranteed to keep receiving a bonus of a certain amount. But clearly Mr J will have been very disappointed not to get any bonus at all. I appreciate from listening to Mr J's phone call the depth of feeling he has on this point.

With profits funds have come under a lot of criticism in recent years. The wide discretion given to the insurers in deciding how and whether to allocate bonuses can lead to concerns about transparency in how the fund operates. This is why the regulator (now the FCA) requires firms to publish a PPFM document. But the regulatory oversight goes further than this.

Phoenix's operation of the fund is also supervised by the FCA. Mr J mentions that Phoenix wrote to plan holders to tell them it was changing its approach from paying regular bonuses to potentially paying a final bonus. The FCA will have been aware of this. And if, as Mr J suggests, the fund is not being managed appropriately, that would be a matter of regulatory concern. I say this because Mr J isn't the only person who might stand to gain, or perhaps lose, from potentially different decisions on how to pay bonuses. So I agree with him on this point.

We regularly pass on concerns consumers have raised about specific with profits funds to the FCA. And I can confirm we've done this in Mr J's case. In general when a matter is reported to the FCA it has certain duties and obligations regarding the confidentiality of the information it holds. So it often isn't able to confirm specifically what action it might take on a particular matter.

If the FCA does consider that any consumer's comments need to be addressed, then it has the power to make Phoenix take further steps in managing the fund. In that event it's likely Mr J would then hear of any changes taking place from Phoenix directly, rather than through the FCA or this service.

I hope Mr J will appreciate that I have no way of knowing whether this is likely to happen. I'm not aware that the regulators have had particular concerns about the Phoenix with profits fund in the past. So on balance, I think it's unlikely the outlook for his pension plans will significantly change in the near future. But the amount of final bonus he receives at the end of the plan term will be determined using the principles set out in the PPFM; and will be subject to regulatory supervision.

my final decision

I do not uphold Mr J's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 9 November 2015.

Gideon Moore
ombudsman