

complaint

Mrs H brings this complaint on behalf of her late husband's estate. She is represented by her son. The complaint is that Phoenix Life Assurance Limited shouldn't have processed Mr H's single life annuity application in 2008, after he was diagnosed with Alzheimer's.

background

Mr H was diagnosed with Alzheimer's in 2006. His family applied for power of attorney, signed in 2006, but date stamped as having been registered in 2009.

In 2008, Mr H wanted to take his pension benefits. Phoenix Life sent him a retirement pack, including a key features document, which told him all about his options. This included information about joint, impaired life and enhanced annuities. He was given quotes for a single life annuity with and without a guaranteed period.

Phoenix Life took a call from Mr H in May 2008. Phoenix Life's records says it went through the forms with him, his wife and daughter.

In May 2008, Phoenix Life received the completed forms from Mr H. Because there was a discrepancy with the signature on the form, it sent out another form to be completed, so that it could verify his signature.

This form was completed and sent back to Phoenix Life in June 2008. Mr H's signature was witnessed by a parish priest. Phoenix Life accepted this and went ahead and processed Mr H's annuity in line with his instructions.

When Mr H passed away the annuity payments stopped because it was a single life annuity. Mr H's son said that Phoenix Life shouldn't have paid Mr H his pension as he wasn't capable of making decisions in 2008. He also said that his mother and sister deny having any conversation with Phoenix Life in 2008. And Mrs H wouldn't have agreed to the terms of an annuity which didn't take into account her interests.

Our adjudicator looked into the complaint and didn't uphold it, saying, in summary:

- Phoenix Life followed Mr H's instructions and set up a single life annuity in good faith;
- the key features document within the quotation pack sent to Mr H explained how he could take his benefits;
- the registration date on the power of attorney documents was 2009, after Mr H took his pension benefits; and
- Phoenix Life was unaware of the state of Mr H's health, or that there was a power of attorney, when it processed his instructions.

Mr H's son didn't accept our adjudicator's view. He said, in summary:

- it was accepted that Mr H got the retirement pack. What was being disputed was Mr H's understanding of the options listed, bearing in mind his state of mind;
- no conversation ever took place with his mother or sister and he could prove that his sister was elsewhere;
- there were no call recordings to verify the telephone call;

- Phoenix Life agreed there was a discrepancy with his father's signature. This proved his father's state of mind and confirmed that he wasn't able to sign his own name; and
- they couldn't speak to the parish priest because he was no longer available.

The adjudicator responded to say:

- Phoenix Life's records don't show it was made aware of Mr H's health condition;
- Phoenix Life don't have the call recordings due to the time that has passed. But, there was an entry on its system showing that a call was made to it from Mr H;
- Looking at the medical records it is clear that Mr H was diagnosed with Alzheimer's in 2006;
- As Phoenix Life wasn't made aware of this, and didn't have a copy of the power of attorney when it paid out the benefits, it would be unfair to hold Phoenix Life accountable.

my findings

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

I sympathise with the situation the late Mr H's family find themselves in. However, having considered everything that has been said, I agree with our adjudicator's view, and for much the same reasons.

The information Phoenix Life sent Mr H about his options made it sufficiently clear that there were other options available, such as a joint or impaired life annuity. I don't think Phoenix Life knew of Mr H's health condition, or of the power of attorney, at the time it processed his instructions to take out a single life annuity. I think therefore, it acted in good faith when it did so. And in those circumstances, it wouldn't be reasonable to hold it responsible.

I don't think that Phoenix Life could reasonably have known just from the discrepancy in the signature that Mr H was suffering from a condition affecting his state of his mind. And I think it took reasonable steps to verify the signature, in line with its own processes, before processing his application.

I haven't placed any weight on the dispute about whether Mrs H and her daughter took part in the call in 2008. I say this because I don't think Phoenix Life would've known at the time that Mr H may not be capable of making a decision about his pension independently.

my final decision

For the reasons given above I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H, on behalf of the late Mr H's estate, to accept or reject my decision before 25 April 2016.

Kim Parsons
ombudsman