

## Ombudsman's Determination

Applicant	Mr N
Scheme	Phoenix Life Personal Pension Plan ( <b>the Policy</b> )
Respondents	Phoenix Life Limited ( <b>Phoenix Life</b> )

## Outcome

1. I do not uphold Mr N's complaint and no further action is required by Phoenix Life.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mr N says Phoenix Life ought to have made it clear in 2011 that it would not be paying any terminal bonus at that time or in the future. Mr N says Phoenix Life must have been aware at the time that a terminal bonus would not be paid but deliberately gave misleading information.
4. Mr N says his fund value was misquoted in 2011 - at a critical time. Mr N asserts that the misstatement, and Phoenix Life's failure to confirm whether (or not) a terminal bonus would be applied to his Policy, seriously impacted decisions he made about his pension and caused him significant financial loss because he lost out on annuity income by delaying his retirement until 2016 in the reasonable expectation that he would receive a final bonus.

## Background information, including submissions from the parties

5. Mr N's Policy is part of the Phoenix Life SAL with-profits fund - a traditional with-profits policy. Mr N's original Policy was taken out with Sun Alliance Life in 1984. The benefit date under the Policy was 25 March 2016 (age 65) (**the Maturity Date**).
6. Under traditional with-profit policies, the initial guaranteed basic sum assured (**GBSA**) is increased by the addition of annual bonuses. Investors may also get a terminal/final bonus when their policy matures - but this is not guaranteed.
7. Mr N has provided an excerpt from policy conditions dated '2-1983' (**the Policy Conditions**). Paragraph 9 of the Policy Conditions states that:

“Provided the Annuitant has attained the age of 60 years or, prior to attainment of that age, produces evidence satisfactory to the Company that he or she has become incapable through infirmity of body or mind of carrying on his or her own occupation or any occupation of a similar nature... the Annuitant may request the Company to apply the Policy Proceeds available at a selected date...except that the selected date shall be substituted for the [Maturity Date]...”

8. Paragraph 7 of the Policy Conditions defines the Policy Proceeds as:

“the Guaranteed Basic Sum under the Policy plus bonuses attaching at the appropriate date, reduced, if benefits commence prior to [the Maturity Date], according to the basis used by the Company for such reductions.”

9. The Sun Alliance Life July 1987 booklet states that the with-profit option offers a guaranteed basic sum plus annual bonuses and, a capital bonus may be added at retirement. The Information sheet as at October 1987, contained similar wording (**the 1987 Brochures**).
10. Phoenix Life says while the 1987 Brochures were not in force at the time Mr N took out the Policy they are the nearest it has available to the date his Policy was taken out.
11. Mr N's Policy originally had a GBSA of £20,368; this increased to £25,496 in July 1989 when he increased his premiums.
12. Phoenix Life's with-profits guide as at January 2009 (**the Guide**), states that the benefits payable at maturity are the guaranteed amount, annual bonuses and final bonus, which may be added when the policy matures. The Guide states that to receive full benefits all premiums due must be paid and, in the event that the policy is paid up, any futures bonuses will be added to the reduced benefit.
13. The Guide states that Phoenix Life will confirm the exact amount of any final bonus when it makes payment.
14. Mr N's annual plan update at 31 December 2010 (**the 2010 Statement**) shows GBSA of £25,496 and total bonuses earned to the statement date of £15,750.
15. In February 2011 Phoenix Life issued a notice, which outlined changes to how Phoenix Life manages its with-profit business. The notice states that ‘for the July 2010 final bonuses Phoenix Life had allowed an additional 5% increase before smoothing and that this meant it had generally limited increases in total maturity pay-outs to 12.5%’. The notice states that the benefits payable at maturity were the GBSA; annual bonuses; and a final bonus which may be added when the policy matures and that Mr N is guaranteed a minimum amount from his Policy equal to the GBSA increased by annual bonuses, but the guarantee only applied at maturity - or for some policies on earlier death (**the February 2011 Notice**).

16. On 24 April 2011, Mr N (then aged 60) enquired about taking immediate benefits from the Policy; the total available to purchase an annuity and the annuity rate. He also asked for details of the total sum which would be available should the Policy continue to March 2016 on the basis of: (a) premium continuing and; (b) premiums ceasing.
17. On 7 May 2011, Phoenix Life issued a retirement illustration based on a selected retirement date of 07 May 2011 and a fund value of £28,848 as at that date. It provided six benefit illustrations, using different combinations of tax free lump sum, yearly increases, guarantee periods and spouses pensions. It said the above quotes took into account any GARs which applied to the plan and were just examples. Members should ask if they would like quotes based on specific choices they wanted to make. The letter also recommended taking advice before making a decision and offered assistance in finding a financial adviser.
18. On 18 May 2011, Mr N notified Phoenix Life that he had decided not to take his benefits before the Maturity Date because taking the pension early is too expensive in terms of lost earned bonus and final bonus payments.
19. Mr N continued paying into the Policy.
20. Mr N's September 2014 annual statement states that 'final bonus, if applicable, is only payable when the plan becomes a claim and final bonuses are reviewed bi-annually as a minimum but may be changed at any time and are not guaranteed'.
21. Phoenix Life's July 2015 with-profits key updates states that 'the payment of a final bonus is not guaranteed and guarantees would normally be lost if the policy is surrendered or transferred out'.
22. The July 2015 policy update (**the July 2015 Update**) states that a final bonus may be payable but this is not guaranteed.
23. The wording in Mr N's August 2015 annual statement - about the likelihood of Phoenix Life paying a terminal bonus, is not dissimilar to the wording in the September 2014 annual statement.
24. Phoenix Life's January 2016 factsheet for former Sun Alliance traditional with-profits endowments policies states that all policies maturing at that time would receive a final bonus (**the 2016 Factsheet**).
25. Mr N took his benefits on 25 March 2016. Phoenix Life says the total value of his Policy at that date was £41,363 - the combined value of the GBSA of £25,496 and total accrued bonuses of £15,867.
26. Mr N's further comments on his complaint are set out below.
  - The conditions of the Policy specifically allowed retirement from the age of 60 - and for the GBSA to also be applied from that age.

- The 2010 Statement supports his assertion that his fund value should have been in the region £41,245 by April 2011.
- He assumed his income would fall significantly short of his expectations, in view of the quoted fund value of £28,848 and average annuity rates at that time. Consequently, he continued paying into the Policy and delayed taking his benefits by five years.
- The February 2011 Notice was sent to him at the time he was considering taking his benefits. The notice was misleading - it mentioned final bonuses of up to 12.5%.
- He queried the fund value of £28,848 around May/June 2011- Phoenix Life acknowledged at the time that the fund value was wrong but he did not keep details of those contacts with Phoenix Life.
- When he enquired about final bonuses at that time, Phoenix Life advised it could not provide details until the Policy was fully paid-up. Phoenix Life's refusal to confirm whether (or not) a terminal bonus would be paid, in part, influenced his decision to delay his retirement.
- Phoenix Life advised that he should complete the full contractual term (**the Term**) in order to qualify for a terminal bonus, this (in part) led to his belief that he should be entitled to a final bonus on maturity.
- Phoenix Life's policy of concentrating bonus pay-outs on final bonuses were regularly quoted in the media - the wording in the 2016 Factsheet demonstrates that Phoenix Life were still, in 2016, issuing vague statements about terminal bonuses.
- He considers his financial loss to be £2,400, equating to the additional five years' worth of premiums he would not have otherwise paid; his calculated loss of five years' pension payments of £14,000, plus 5 years' interest on his cash lump sum to be reasonable compensation.

27. Phoenix Life's further comments are set out below.

- The GBSA of £25,496 detailed on the 2010 Statement, was only guaranteed to be paid at the Maturity Date, at which time accrued bonuses are added, along with any terminal bonuses that applied. Consequently, the combined value of the GBSA and the bonuses - £41,246, was not the value of Mr N's fund in May 2011.
- The fund value of £28,848 was correct at that time - the value is lower because it was quoted as at 7 May 2011 - and not at the Maturity Date. Consequently, the value was reduced.
- It is unable to provide any documentary evidence as to what Mr N may have been advised in relation to completing the full Term and cannot locate any calls he says

he made at the time. Given that terminal bonuses have never been guaranteed, Phoenix Life finds it highly unlikely that it would have informed Mr N that he would receive a terminal bonus if he completed the full Term.

- It was entirely Mr N's decision as to when to take his benefits. Consequently, Phoenix Life does not accept responsibility for any alleged financial loss.

### **Adjudicator's Opinion**

28. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by Phoenix Life. The Adjudicator's findings are summarised briefly below.

- The evidence does not support that Phoenix Life gave Mr N misleading information about the payment of terminal bonus on his Policy. The communications relevant to his Policy were sufficiently clear that terminal bonuses were not guaranteed.
- There is no evidence to corroborate that Phoenix Life acknowledged that the fund value of £28,848, as at 7 May 2011, was wrong at the time. In any case, if Phoenix Life had acknowledged the alleged mistake, it was not reasonable for Mr N to have relied on the figures in the way he says he did.

29. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N has provided his further comments but these do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr N for completeness.

### **Ombudsman's decision**

30. Mr N says while Phoenix Life's continued references to 'a non-existent Final Bonus' in its literature is legal, he certainly found them mis-leading. Mr N says Phoenix Life should stop hiding behind phrases such as '...may be added' and '...not guaranteed' and be honest and clear in its information.
31. Mr N says Phoenix Life failed to confirm that there would be no possibility of a terminal bonus - at a time when he was trying to make an important financial decision about his pension.
32. I find that Phoenix Life's position on terminal bonuses was clear. Furthermore, there was nothing in the Policy which stated that Phoenix Life had to declare, in advance, whether (or not) a terminal bonus would be paid. The fact that Phoenix Life did not confirm either way, when Mr N enquired, is not, in itself, evidence of maladministration.
33. Mr N questions how the value of £28,848 was arrived at in May 2011, given that Phoenix Life was only using the GBSA of £25,496. Mr N says Phoenix Life would not

give any details of the quote at the time and did not state that it would be withholding his accrued annual bonuses.

34. The fund value of £28,848 was quoted by Phoenix Life on the basis that Mr N would take his benefits from May 2011. As this is before the Maturity Date both the GBSA and the annual bonuses declared up to that date would be reduced because he was taking his benefits early.
35. Mr N says as his Policy was a with-profits policy, the existing annual bonus was permanent and added to the GBSA every year. Mr N asserts that paragraph 9 of the Policy Conditions specifically allowed retirement from the age of 60. He says there is no mention in any of his Policy documents or statements that the existing annual bonus would be deducted if he took his pension before age 65.
36. That is not correct. Paragraph 9 of the Policy Conditions does say that the Policy Proceeds may be accessed from age 60. However, paragraph 7 is clear that the Policy Proceeds, which are the GBSA plus the attaching bonuses, will be reduced if the benefits are taken prior to the Benefit Date, i.e. the Maturity Date.
37. I cannot see any evidence that the May 2011 statement was calculated on an incorrect basis.
38. Even if I were to accept that Phoenix Life acknowledged in 2011 that the fund value of £28,848 was incorrect, I do not think it would have been reasonable for Mr N then to have relied on a figure which he believed to be wrong when making his financial decisions.
39. Lastly, I can see no evidence of financial loss. Mr N's calculation proceeds from the belief that he was entitled to the same policy proceeds in 2011 as he eventually received in 2016. For the reasons set out above I do not agree that this was so.
40. Therefore, I do not uphold Mr N's complaint.

**Karen Johnston**  
Deputy Pensions Ombudsman

13 January 2017