PO-23773

Ombudsman's Determination

Applicant	Mrs Y
Scheme	Phoenix Life Freedom Bond (**the Policy**)
Respondent	Phoenix Life

Outcome

1. I do not uphold Mrs Y'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. Mrs Y's complaint concerns her being unable to take a lump sum and annuity from the Policy, despite the fact that there are documents from when she first took out the Policy stating that she would be able to.

Background information, including submissions from the parties

4. On 18 July 1989, Mrs Y transferred her benefits from the Midland Bank Pension Scheme (**Midland Bank**) to a Section 32 Freedom Bond with Pearl Assurance (now Phoenix Life). The transfer value was £4,149. At the time of transfer, Mrs Y had accrued a Guaranteed Minimum Pension (**GMP**) of £5,271.24, with a nominal capital sum of £14,698. At the time, this was expected to be sufficient to provide her GMP.

5. The underlying premise of Section 32 policies, such as the one taken out by Mrs Y, was that the transfer value would be invested and at retirement the total fund would be used to provide a pension. The pension provided would, however, not be less than the GMP that the policyholder would have received from the transferring scheme.

6. The Policy documents at the time of transfer state:

   "At the time of commencement of the pension there will be an option to take a tax-free lump sum up to the maximum permitted under legislation in lieu of a portion of the pension, which in case the pension will be appropriately reduced."

   …

"A single premium of £4,149 has been paid. In return the company will pay at your 60th birthday a sum of £14,698 plus bonuses, which must be applied to purchase an annuity, although there is an option for you to take part of the benefits in the form of a tax-free lump sum."

The Schedule of the Policy also states that Mrs Y may take a pension early.

7. In 1999, the transfer of the Policy was investigated as part of a Pensions Review. The reasons for review are not material to this complaint. However, it was established that Mrs Y had been disadvantaged by taking out the Policy. She was given two offers, either to increase the nominal capital sum from £14,698 to by 129.58% to £33,743.67, or to transfer back to Midland Bank as if she had never transferred out. Mrs Y opted for the increase.

8. In 2018, Mrs Y asked Phoenix Life whether she could take her benefits early and receive payment of her lump sum. She was told that this was not possible due there being insufficient funds in the Policy. She subsequently complained to Phoenix Life.

9. In May 2018, Phoenix Life issued its final response letter. It explained that the value of the Policy had grown from £4,149 to £72,096, however the Policy value was not enough to provide Mrs Y's GMP and a 25% cash lump sum. As it has a statutory requirement to provide Mrs Y's GMP, taking her cash free lump sum was not an option.

10. Mrs Y did not agree with the outcome so brought her complaint to this Office. She highlighted that the original word of the Policy stated that she would be able to take a lump sum.

Adjudicator's Opinion

11. Mrs Y's complaint was considered by one of our Adjudicators who concluded that no further was required by Phoenix Life. The Adjudicator's findings are summarised briefly below: -

- Certain pension schemes, such as Midland Bank, chose to "contract out" its members from the State Earning Related Pension Scheme (**SERPS**). This placed a statutory obligation on the pension scheme to pay what the member would have received from the state if they had not been contracted out of SERPS. In return, members and employers would pay lower rates of National Insurance. When Mrs Y transferred her pension to Pearl Assurance, it took on the obligation to pay her GMP of £5,271.84 per annum.

- The transfer value when Mrs Y took out the Policy was £4,149. At the time, there was an expectation that the transfer value would grow sufficiently by Mrs Y's retirement date, and the fund value would be enough to provide the GMP plus further benefits. However, the cost of providing the GMP is now greater than the value of the Policy, meaning that there is no residual fund value to provide a lump sum or annuity. Phoenix Life is required to make up the difference between the Policy value and the cost of providing the GMP in order to fulfil its statutory obligations.

- Therefore, although the original Policy documents state that Mrs Y would be able to take a lump sum, this is no longer an option.

- Mrs Y does have the option of transferring to another provider, but it would still be obligated to pay her GMP, so she would be in the same situation, assuming the new provider would take on the additional cost of paying it.

12. Mrs Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs Y provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mrs Y for completeness.

Ombudsman's decision

13. Mrs Y argues that the terms of the Policy, stating that she would be able to take a lump sum, forms a contract which Phoenix Life should follow.

14. When Mrs Y took out the Policy, there was an expectation that the value would grow to provide both the GMP and additional benefits. But, if this did not happen, Mrs Y would not receive less than her GMP.

15. I realise that Mrs Y had the expectation that she would be able to take a lump sum from the Policy. However, as explained by the Adjudicator, this would only ever be possible if the value of the Policy grew sufficiently to cover the cost of provided the GMP plus further benefits. Even though the nominal capital sum was uplifted by 129.58%, Phoenix Life has calculated that there is a deficit between the Policy value and the amount required to provide the GMP, which Phoenix Life must cover. Therefore, there are no funds available to provide further benefits.

16. Mrs Y has argued that the wording of the Policy forms a contract. I agree, but the contract creates an option to take a tax-free lump sum only up to the maximum permitted under legislation with the proviso that the annuity will then be reduced proportionately. Legislation does not permit a lump sum of more than zero where the GMP cannot be covered. It is not possible to reduce a GMP to provide a lump sum. Any benefits in addition to the GMP were always subject to the growth of the Policy value, although I appreciate this may not have been made clear to Mrs Y when she took it out.

17. Whilst I sympathise with Mrs Y's position, I do not find that Phoenix Life are administering the Policy incorrectly.

18. Therefore, I do not uphold Mrs Y's complaint.

Karen Johnston

Deputy Pensions Ombudsman
30 January 2019