

Ombudsman's Determination

Applicant	Mr D
Scheme	Phoenix Life Personal Pension Policy (the Policy)
Respondent	Phoenix Life Limited (Phoenix)

Outcome

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

Complaint summary

3. Mr D's complaint is that incorrect literature from Phoenix caused him to defer taking retirement benefits to his normal retirement age (**NRA**) of 60, in November 2018. He expected a higher terminal bonus in lieu of the pension payments that he would have received by retiring earlier.

Background information, including submissions from the parties

4. In May 2010, Phoenix issued a letter to Mr D with a policy schedule that quoted a terminal bonus of £45,219.83. This was for a replacement policy, after Mr D had ended membership of Rolfe and Nolan Computer Service plc (1979) EBP in 1993.
5. According to Mr D, he has suffered a financial loss of £51,512 by not retiring at age 50 in 2008. He said that he could have claimed cumulative pension payments of £204,494 up to age 75 from that point. By contrast Mr D said that the total would only be £152,982 by retiring at age 60. He argues that he had been relying on correspondence from Phoenix over the term of the policy showing terminal bonuses of between 19% and 53%. This led him to believe that they were always a significant element of his pension fund. It was on this basis that Mr D says he deferred his pension to age 60. However, in June 2018, he received a retirement pack quoting a terminal bonus of only £3,103. This would not offset the cumulative pension payments that he believed he could have received between ages 50 and 60.

6. On 23 October 2018, Mr D made the following complaint to Phoenix:-

- Since June 2018 Mr D had been requesting information to enable him to make a decision regarding the best date from which to take his pension benefits, but Phoenix's responses had been remodelled versions of the same details.
- Mr D's IFA had also been raising questions to the same end, some of which remained unanswered.
- An illustration Mr D received in June 2018 quoted a terminal bonus of £3,103, but a response to his IFA dated 20 September 2018 only quoted £2,252. Mr D expects the higher figure to be honoured by Phoenix.
- Mr D has suffered a financial loss due to Phoenix's misleading literature that raised his expectation of the level of terminal bonus, which caused him to defer taking benefits to his NRA of 60.
- Mr D's delay in taking retirement benefits was due to his expectation that the terminal bonus would increase towards the end of the Policy term. He sacrificed receiving pension payments from an earlier date.
- The Policy document states that GARs may only be secured at or after the normal retirement date (**NRD**). However, Phoenix's letter dated 20 October 2016 quoted a retirement date of 20 November 2018 (Mr D's NRD), implying no alternative dates were available.
- A letter issued to Mr D's IFA by Phoenix, dated 20 September 2018, said that benefits could be taken from age 55, but that was the first time Mr D had seen an age other than 50 or 60 quoted, leaving him confused.
- Mr D viewed the quoted terminal bonus of £3,103 as unusually low, particularly when linked to what he considers to be negligible annual bonuses that have been applied historically.
- Mr D said that he was seeking an award to cover the poor terminal bonus and in respect of Phoenix's misleading correspondence that led him to take his pension later, causing him financial loss.

7. In summary, Phoenix's response of 19 December 2018 said:-

- The policy schedule provided to Mr D in May 2010 assumed certain growth rates that had been used within the pensions industry.
- The industry has not performed as well as anticipated and therefore bonuses were not as high as had been estimated.
- Contributions to the Policy stopped in April 1993, which affected its growth.
- The Policy's investment performance and terminal bonus were never guaranteed but were dependent on the investment returns over the Policy term.

- Mr D's complaint was not upheld.

Adjudicator's Opinion

8. Mr D's complaint was considered by one of our Adjudicators who concluded that no further action was required by Phoenix. The Adjudicator's findings are summarised below:-

- Terminal bonuses are not guaranteed and are based on the profits earned over the duration of the Policy that have not already been distributed as an annual bonus. They can be changed or withdrawn at any time without notice, according to the Policy literature. This is an inherent feature of this type of policy and Phoenix has maintained this position consistently.
- Phoenix is acting in line with the Policy's terms, and its own usual practices, and the Adjudicator did not consider that this amounts to maladministration. This meant that the Adjudicator did not uphold Mr D's complaint about the reduction in the terminal bonus between June and September 2018.
- Mr D said that, had he known that the terminal bonus would reduce, he would have taken his retirement benefits as early as possible. However, Phoenix could not reasonably have been expected to know there would be a reduction in the terminal bonus between quotes.
- Mr D has argued that Phoenix's correspondence implied no other retirement date was available other than Mr D's NRD. It was reasonable that Phoenix quoted Mr D's NRD and the Adjudicator did not agree that this suggests the NRD had been the only option. Mr D could reasonably have been expected to query whether or not other retirement dates were available, if he was unsure.

9. Mr D did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr D for completeness.

10. Mr D raised the following points:-

- Overall stock market returns have been high, but the growth on his pension has been disappointingly low.
- The disappointing annual and terminal bonuses that have been paid indicate maladministration by Phoenix.
- Phoenix has over many years led him to believe that he would receive a large terminal bonus, which was withdrawn shortly before his retirement benefits became due for payment.
- He does not believe that his reasonable expectations have been met by Phoenix.

- The NRD of 60 that was quoted by Phoenix appeared to be definitive and he formed the opinion that his pension would be voided, if the retirement benefits were taken earlier.
- He is not a pensions expert and the cost of seeking the assistance of a financial advisor is prohibitive.

Ombudsman's decision

11. I recognise that Mr D is disappointed with the growth of his pension. However, investment performance complaints of this nature fall outside of my jurisdiction. Consequently, I will focus on the misleading information that Mr D says he has received from Phoenix.
12. In the absence of evidence which shows that Phoenix guaranteed any level of terminal bonus, I find that Phoenix has not misled Mr D to expect a greater amount than has been quoted. Phoenix's response that terminal bonuses had not been guaranteed is typical for this type of policy and in keeping with its own operational procedures. Phoenix has been reasonable in taking this position with Mr D.
13. I do not agree that an illustration or any other correspondence that quotes benefits at the NRD conveys that it is the only date on which benefits may be taken by Mr D. I recognise that he may not be a pensions expert. However, it would be reasonable to assume that any member understands that they could raise an enquiry with Phoenix, before deferring their retirements benefits to the NRD. Mr D has not taken such action, which would have prompted Phoenix to confirm his retirement date options. In that case, it would not have been necessary for Mr D to consult with a financial advisor and incur costs.
14. Mr D has not provided evidence that he had been considering early retirement when he decided to wait until his NRD to claim his retirement benefits. However, with the benefit of hindsight, he now says that he would have been better off retiring early. I find that it was not a reasonable expectation for Mr D to rely on the hope of a large terminal bonus as a reason for not doing so.
15. Therefore, I do not uphold Mr D's complaint.

Karen Johnston

Deputy Pensions Ombudsman
16 August 2019