

## Ombudsman's Determination

Applicant	Mr N
Scheme	Pearl Retirement Annuity Contract (the <b>Plan</b> )
Respondent	Phoenix Life ( <b>Phoenix</b> )

## Outcome

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

## Complaint summary

3. Mr N's complaint against Phoenix is:
  - They have failed to comment on the documented and verbal assurances Pearl gave him during 2001/2 when he contacted them regarding their suspension of annual bonus payments for the Plan.
  - The High Court ruling on Equitable Life is that the insurer could not reduce terminal bonuses to mitigate the costs of guarantees under with-profits policies made at the commencement of the agreement.
  - The value of the Plan has remained static for the last 15 years. Bonuses were added to the Plan until 31 December 2001, when the value of the fund was £21,438. This was the same total used in April 2015 to convert the fund to an annuity.

## Background information, including submissions from the parties

4. Mr N took out the Plan with the Pearl, subsequently acquired by Phoenix, in 1985.
5. The policy document (the **Policy**) for the Plan shows the Nominal Capital Sums (**NCS**) payable, and the minimum annuity rates used to convert each £1,000 of the NCS, on retirement at ages 60, 65, 70 and 75, based a monthly premium of £20. It states that any bonuses allocated shall be in addition to the NCS.
6. In 2001, Mr N contacted Pearl about the fact that his bonus statement for 1999 showed a terminal bonus of £0.00. Pearl confirmed that he was still eligible for a

terminal bonus. They explained that a terminal bonus does not become applicable on the type of pension policy he has until he reaches age 60; in the year he retires, they will quote the amount of terminal bonus he is eligible for; and they cannot guarantee the amount as the terminal bonus is not guaranteed.

7. In February 2007, the Pearl sent Mr N a standard letter explaining the changes they were making to their Principles and Practices of Financial Management in respect their with-profits fund. They said that from 1 July 2007, they would be in a position to distribute some of their inherited "estate" to with-profits policyholders by way of higher final bonuses.
8. In 2015, Mr N complained to Phoenix that the Plan has had zero growth since 2001; no terminal bonus has been paid; and the Plan has seen no uplift in its value despite Pearl's with-profits estate. Phoenix responded as follows:
  - They do not have any documents from the time the Plan was first set up, which shows what was said to him about how the with-profits policy would perform. However, the figures quoted at that time would not have been guaranteed and were only an estimate of the projected benefits that might be payable upon retirement.
  - They have calculated that the average return on the with-profits policy to be 6.35% per annum. This is based on the premiums paid from the start, and the retirement fund of £21,439 that was due to be paid on 6 April 2015.
  - The Plan is a with-profits policy and contains guaranteed values for premium paying policies. Their primary goal is to ensure that all policyholders' guaranteed benefits are protected. They would only add bonuses when the return on their investments, after allowing for profits or losses on the running of the life insurance business, are higher than was assumed when calculating the premiums.
  - Terminal bonuses are not guaranteed, but will be added to a policy when growth is in excess of that required to meet the guaranteed benefits. Unfortunately growth has not reached the necessary levels, which means that no terminal bonus is due.
  - When determining whether a final bonus is due, they compare the underlying values of specimen maturing policies with the value of their guaranteed benefits. If the underlying value of the policies is more than the value of their guaranteed benefits, they will add a final bonus; however, if the opposite is true, they will not add a final bonus.
9. In March 2015, Mr N decided to take an annuity with Phoenix in respect of his benefits under the Plan.
10. Mr N says that he was not told by Phoenix in 2001, when he made his enquiries, that only if the underlying value of the policy is greater than the value of the guaranteed

benefits is a terminal bonus paid. He says that they are paying bonuses on policies with no guaranteed benefits, but not on his policy.

### **Adjudicator's Opinion**

11. Mr N'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 briefly below:
- The Plan is a with-profits policy, which contains guarantees that are covered by the underlying assets of Pearl's (subsequently Phoenix's) with-profits fund. Bonuses are guaranteed once they are declared. Therefore, until a bonus is declared it is not guaranteed.
  - The main priority of a with-profits policy is to protect the guarantees. Besides any bonuses that have been declared, the guarantees may include annuity rates used to convert the fund to an annuity at retirement.
  - In 2001, Pearl told Mr N that he was eligible for a terminal bonus but explained that the bonus would only be applied when he reached age 60 and that it could not be guaranteed. The fact that he was eligible for a terminal bonus does not mean that one would be paid when he reached age 60. Therefore, he was not given any guarantees that a terminal bonus would be paid to the Plan when he retired.
  - The issue in the case of *Equitable Life Assurance Society v Hyman* is the decision of the directors of Equitable Life to apply differential bonuses to policyholders who had policies which contained guaranteed annuity rates. Therefore, the judgment in *Equitable Life Assurance Society v Hyman* case does not apply in this case.
  - There is no dispute that the last bonus was declared in 2001, and there has been no investment growth under the Plan for the last 15 years. However, there is nothing in the Policy that states that Pearl, or Phoenix, has to declare a bonus each year or a terminal bonus when Mr N retires.

### **Ombudsman's decision**

12. Mr N says that Phoenix are paying bonuses on non-guaranteed policies, but not his. With-profit policies provide guarantees on the bonuses declared and sometimes guaranteed annuity rates used to convert the pension fund to an annuity at retirement. Therefore, there are no non-guaranteed with-profit policies.
13. Phoenix have said that if the underlying value of the policies is more than the value of their guaranteed benefit, they will add a final bonus. Therefore, it is entirely possible that bonuses are being paid under certain with-profit policies because their underlying value is more than the guaranteed benefits but this is not maladministration.

14. There is nothing in the Policy which states that Phoenix have to declare a bonus each year or that a terminal bonus has to be paid when Mr N retired.
15. Therefore, I am unable to find maladministration on the part of Phoenix and consequently I do not uphold Mr N's complaint.

**Anthony Arter**

Pensions Ombudsman  
18 August 2016