

The complaint

Mr and Mrs P complain that Phoenix Life Limited (Phoenix) mis-sold a whole of life (WOL) policy and a guaranteed insurability option (GIO).

What happened

In October 1993, Mr and Mrs P took out a joint life assurance policy (WOL) which included life and critical illness cover and an initial sum assured of £30,000. They also took out a separate joint Cover Master (also WOL) policy providing life cover only with a sum assured of £50,000. The policies were surrendered in 2008. I understand this is because of a change of circumstances which meant Mr and Mrs P needed to reduce their expenditure.

Mr and Mrs P's representative complained to Phoenix about the WOL policy with critical illness and a sum assured of £30,000 (but not the Cover Master policy). They also complained about the GIO which was taken out in 1998. It is the sale of these two policies that I'm asked to consider in this decision.

Phoenix responded to the complaint in January 2020. In respect of the WOL policy they said that a fixed term assurance plan for a term of 21 years would have been more appropriate. This would have ensured that they had cover until Mr P's retirement age. They offered to refund the excess amount of premium above what a term assurance plan would have cost (including 8% simple interest but minus basic rate tax and less the surrender value). After comparing this with the cost of the WOL plan actually taken out, they calculated that no compensation was due.

In respect of the GIO, Phoenix said that this would not have been sold had a term assurance policy been taken out. Therefore, Phoenix offered to refund the premiums paid (plus gross interest at 8% simple but minus basic rate tax and the surrender value).

Mr and Mrs P didn't accept the offer and asked us to investigate. Their representative explained the offer wasn't reasonable. The Investigator issued their view explaining why they felt a fixed term plan with critical illness cover for a term of 21 years would have been more appropriate. She explained why she felt Phoenix's offer was fair and reasonable in the circumstances.

Mr and Mrs P's representative didn't agree with the Investigator's view. The representative said there was no justification for comparing the cost of a fixed term assurance plan with critical illness cover over a 21-year term. He said there's no explanation for the length of the term other than it being Mr P's retirement age and it isn't clear that they would have wanted cover to stop when it included critical illness cover. He also said Phoenix made this assumption even though they originally recommended a WOL plan and the chances of suffering a critical illness increase as one gets older. Therefore, the representative said

Phoenix should refund the premiums deducting only the actual cost of the critical illness cover.

Therefore, the case has been passed to me to decide.

What I've decided – and why

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

I've reviewed the fact find from 1993 to see what the advisor understood of Mr and Mrs P's personal and financial circumstances at the time. The advisor recorded that Mr and Mrs P were married, with young children and self-employed. In respect of their financial circumstances, the advisor recorded the income and expenditure, as well as their liabilities.

Additionally, the advisor recorded Mr and Mrs P's existing policies. The advisor noted the level of cover Mr and Mrs P already had and the amount of cover needed. He found there was a shortfall.

I can also see the advisor recorded Mr and Mrs P's objectives. The top priority noted on the form was for provision in the event of death or serious illness. The advisor circled that Mr and Mrs P wanted income in the event of illness, injury or death. The agreed priority under the summary of advice section was noted to be family protection and critical illness (as well as savings).

Therefore, I'm content the advisor took steps to obtain enough information about Mr and Mrs P's objectives, financial and personal circumstances in order to make a recommendation.

Taking the circumstances into consideration, I'm satisfied there was a need for critical illness cover and life cover given the shortfall. I can see from the fact find the advisor recommended a Cover Master plan with £50,000 sum assured and a Money Master plan for £30,000 sum assured. Phoenix have provided a copy of the application form which shows Mr and Mrs P took out the Cover Master policy which was a joint life policy based on first death. As well as a living assurance policy with a sum assured of £30,000 which was a joint life and critical illness policy based on first death or critical illness.

I appreciate what Mr and Mrs P's advisor has said about alternatives. I understand Mr and Mrs P cancelled three savings policies so it's likely there was some discussion about the policies they might have for future planning. Nevertheless, in response to the complaint Phoenix felt that a fixed term assurance plan for a term of 21 years would have been more appropriate and they compared the cost of this type of policy to the WOL policy (with critical illness and sum assured of £30,000).

I understand what Mr and Mrs P's representative has said about the length of the term (as summarised above). In addition to this, he has referenced other decisions made by other Ombudsman at our service in which they found there wasn't sufficient evidence that the consumers would have taken out a fixed term assurance plan for a specific term. Those Ombudsman had asked the businesses to refund the premiums less the critical illness cover. I have considered what he's said carefully, however, it's important that I consider the facts of this case and take the individual circumstances into account.

Having reviewed the fact find, I can't see any note recorded for how long Mr and Mrs P needed protection for. However, the advisor did record that Mr P expected and preferred to retire at 65. Also, that Mrs P expected and preferred to retire at 60. The form also does show they wanted protection for income. As this income would stop when they reached the retirement age – I'm content there is enough evidence in this case to say that it was reasonable for Phoenix to conclude that a fixed term assurance plan with critical illness for a term of 21-years would have been a suitable recommendation at the time. I've already set out what the fact find shows about Mr and Mrs P's need for critical illness cover and I'm content this element was appropriate.

Additionally, Phoenix have confirmed the GIO policy was attached to the WOL plan now deemed unsuitable. This means that had a fixed term assurance plan been sold in 1993, Mr and Mrs P would not have purchased the GIO policy. And I agree with what's been said here.

Putting things right

Phoenix have shown that Mr and Mrs P haven't suffered a financial loss as a result of being sold a WOL plan as opposed to a more appropriate fixed term assurance plan. However, they wouldn't have needed to purchase the GIO and Phoenix should put Mr and Mrs P in the position they would have been had they not taken this out.

Phoenix offered to put things right in their final response. To confirm, Phoenix should refund the cost of each premium, plus interest at 8% simple from the date of payment to the date of surrender. They should then deduct the surrender value and add 8% simple interest from the date of surrender to the date of settlement.

If Phoenix considers it legally obliged to deduct income tax from the interest, it must make the appropriate payment to HM Revenue and Customs and send a tax deduction certificate to Mr and Mrs P with the compensation payment. Mr and Mrs P can then reclaim any overpaid tax from HM Revenue and Customs if they are eligible to do so.

My final decision

For the reasons outlined above, my final decision is that Phoenix Life Limited should pay compensation to Mr and Mrs P as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P and Mr P to accept or reject my decision before 11 March 2022.

Laura Dean
Ombudsman