DRN-3434396

The complaint

Mrs P and Mr P complain that Phoenix Life Limited ('Phoenix') mis-sold them a whole of life policy in 1995.

What happened

In November 1994, Mrs P and Mr P met with an adviser from a business that has since been acquired by Phoenix Life Limited and a number of policies were recommended. The reviewable whole of life policy sold by Phoenix included initial joint life cover of £80,000. The monthly premium was initially £40.61 and increased by £4.06 per year for the first five years of the policy. Mrs P and Mr P surrendered the policy in 2012.

Phoenix has taken on responsibility for sales made by the business that sold the policy. Any reference made to Phoenix is also a reference to the business that sold the policy.

Mrs P and Mr P, who are represented by a claims management company (CMC) complained to Phoenix the policy was mis-sold. The CMC said Mrs P and Mr P had no savings at the time, no alternative plans were discussed, there was no mention that the life cover could reduce, and that Mrs P and Mr P would not have understood the policy.

Phoenix upheld the complaint and said it would have been more appropriate for Mrs P and Mr P to have taken a fixed premium term assurance policy over 32 years term. Phoenix said his would ensure cover was provided until Mr P's state retirement age, rather than a reviewable whole of life policy. Phoenix offered to cancel the policy from inception and compare the cost of a joint life term assurance policy over 32 years. They offered to refund the excess amount of premium Mrs P and Mr P had paid plus gross interest at 8% simple, less basic rate tax, and less the surrender value issued. On behalf of Mrs P and Mr P, the CMC rejected this offer and brought the complaint to the Financial Ombudsman Service. Phoenix provided consent for the Financial Ombudsman Service to consider the complaint.

One of our Investigators looked into things. There was no dispute the whole of life policy had been mis-sold, but the Investigator thought a different remedy was more appropriate because Mrs P and Mr P didn't have the same retirement dates. The Investigator thought Phoenix should work out the difference based on two individual term assurance policies being sold. One for Mrs P until her expected retirement date, and one for Mr P until his retirement date. But, if a joint policy would have been cheaper, then the offer Phoenix had already made would be fair and reasonable in all the circumstances.

The CMC didn't agree with the Investigator and asked that an Ombudsman decides the complaint and it's been passed to me to consider.

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.

Phoenix accept a fixed premium term assurance policy would have been more suitable. So,

it seems to me the only issue I have to decide on is how any redress is calculated. I appreciate Mrs P and Mr P will be disappointed, but I've decided that for much the same reasons as the Investigator, the redress should be based on the expected retirement ages of Mrs P and Mr P.

The CMC asked that I consider the regulatory obligations incumbent upon an adviser for advice given post 1 Jan 1995. The sale of the policy actually took place in November 1994, although I note the policy started in January 1995. Regardless of this, there is no dispute that a fixed premium term assurance policy would have been more suitable.

The CMC say Mrs P and Mr P were living with Mr P's parents at the time of the sale and were planning to buy their own property soon and had no savings. I acknowledge these comments, but the sale took place more than 27 years ago. I'm not persuaded these comments reflect what was recorded in the fact-find in 1994. And, as the sale took place so long ago and recollections of what was said at the time are unlikely to be as reliable as notes taken at the time, I've decided to give more weight to what was recorded in the fact-find. It recorded Mrs P and Mr P had no immediate plans to buy a property, and that they were jointly saving £250 per month into a building society account for a 'rainy day'. I note Mr P was also committed to longer term savings through and endowment taken out in 1992 and that it may be used in the near future, maybe to support a mortgage. Taking this information into account, whilst I agree Mr P's endowment may have been used to assist with a house purchase, I don't think there is enough evidence for me to conclude this was going to happen soon, and regardless of this Mrs and Mr P were already saving £250 into a building society account. Because of this, it doesn't seem unreasonable to me that Mrs P and Mr P considered protection was now their priority.

The whole of life policy was surrendered in 2012. Although the CMC suggest this supports Mrs P and Mr P would not have taken a fixed premium term assurance policy until retirement, I don't consider this is a fair and reasonable conclusion. The policy had been in force for 17 years when it was surrendered. It may well have been the case that Mrs P and Mr P surrendered the policy because they no longer needed it, but, at the time of the sale the fact-find recorded they wanted life cover to their expected retirement age. Therefore, I consider it more likely Mrs P and Mr P would have selected a term for their fixed premium term assurance that ran until their expected retirement. I consider any suggestion they would have taken a shorter term on a fixed premium term assurance policy in hindsight is too speculative for me to conclude.

I've noted the comments from the CMC that Phoenix also sold Mrs P a separate policy for living assurance that included additional life cover that wasn't necessary. Phoenix has confirmed this policy was surrendered in 2012 and that it provided both life and critical illness cover. The sum assured would have been payable in event of either claim (not both). For instance, if Mrs P made a critical illness claim the policy would cease after payment and no further monies would have been paid in the event of her death. Taking this into account, I don't consider Mrs P was over insured if she died, but the living assurance policy provided an element of critical illness cover that the policy complained about didn't have. So, I'm satisfied this doesn't have an impact on my decision about the joint life policy being complained about.

Putting things right

Phoenix has agreed a fixed premium term assurance policy for 32 years would have been a more appropriate policy for Mrs P and Mr P, but It seems more likely to me Mrs P and Mr P would have taken the cheapest option available at the time. So, I've decided Phoenix should calculate the cost of separate plans to the expected retirement ages for each of Mrs P and Mr P. Phoenix should then compare the cost against a joint life plan for 32 years and

calculate any redress using the cheaper option. I will refer to this as the total premiums paid (B) and Phoenix should use the following values to calculate any redress:

The calculation should use the following values:

- Total premiums paid in the whole of life policy (A)
- The cost of the fixed term plan(s) (B)
- The surrender value of the policy paid in 2012 (D)

The calculation should be made using the following steps:

1. (A) minus (B) = (C)
2. 8% simple interest should be calculated to the settlement date and added to (C)
3. If (C) then exceeds (D), the difference should be paid to Mrs P and Mr P
4. If (D) exceeds (C), no redress is payable to Mrs P and Mr P

My final decision

I've decided that Phoenix Life Limited should pay Mrs P and Mr P the redress detailed above, if any, as it's a fairer way of resolving the complaint and puts Mrs and Mr P in the position they should have been in had they received suitable advice.

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 27 October 2022.

Paul Lawton
Ombudsman