

## The complaint

Mr A complains that he was mis-sold a whole of life policy in 1982 by Phoenix Life Limited. He is represented by a claims management company ('CMC') in bringing his complaint.

## What happened

In late 2020, the CMC lodged Mr A's complaint with Phoenix. It said at the time of the sale, Mr A had been single without dependents and had no need for the life cover provided by the policy. It also complained that he took a further top up plan in 1992, which would not have been required if this policy hadn't been mis-sold in the first place.

Phoenix issued a final response to the complaint in January 2021 where it upheld the complaint in part. It said that the top-up policy in 1992 hadn't gone ahead, so there was no mis-sale to consider. In terms of the original policy, it said that whilst it was not automatically unsuitable to offer £100,000 cover under a whole of life policy to a young, single person it recognised that at the time of the sale the policy was not likely to be appropriate for Mr A.

Phoenix undertook a redress calculation where it worked out the total premiums paid, less the cost of life cover from 1985 (totalling £7,044.84), when Mr A had gotten married. To this it added interest at rates of 15% and 8% from 1 April 1993. However, the total refund came to £17,598 which was less than the policy's sum assured of £23,886 at 5 December 2020.

So, Phoenix did not believe any payment was due to Mr A. However, the CMC did not agree with the redress set out by Phoenix. It said that accounting for Mr A's circumstances after the sale had taken place was irrelevant. It submitted that Mr A sought a complete refund of all the premiums he had paid for the policy since the outset, on the basis it should never have been sold to him.

The complaint was referred to this service, where it was considered by one of our investigators. She looked specifically at the way Phoenix had decided it should put matters right after it had upheld the complaint.

She asked Phoenix to reconfirm its calculation to assist Mr A, given some time had since passed whilst the complaint was pursued to this service. It confirmed that the redress would have been £19,309.15 to date. However, since the policy remained in force with an increased surrender value of approximately £26,281, Mr A hadn't suffered any financial loss.

Our investigator felt the redress offer was calculated fairly. She thought it was reasonable to look at Mr A's circumstances from 1985 in deciding what he would have otherwise done – and basing redress on his changed circumstances at that time wasn't unfair.

The CMC said Mr A disagreed. It referred to two other decisions which had been upheld by this service relating to the mis-selling of whole of life policies. On both occasions, this service had said the policies were unsuitable, and directed that redress was due. The redress consisted of a refund of all premiums with interest, less the policy's surrender value.

It also explained that the fact the policy remained in force was irrelevant; what it felt was key

was that the policy was unsuitable for Mr A from the outset. The CMC told our investigator that Mr A wanted the complaint to be passed to an ombudsman.

### **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.

Having looked at everything before me, I believe the outcome reached by Phoenix was reasonable. So, while it determined there was not a reason to recommend the policy to Mr A in 1982, it would have been a prudent suggestion to take out a form of life cover in 1985.

Phoenix said that its adviser at the time likely did not provide the appropriate care in giving the recommendation where the policy was sold as a means of life cover to Mr A at a time when he had no dependants or financial liabilities. This is the same argument put forward by the CMC on Mr A's behalf, so both parties agree that the policy should not have been sold. It is not necessary for me to make further findings about that because this primary aspect of the complaint has been upheld by Phoenix.

In any event, it is worth noting that investment advice became regulated under the Financial Services Act 1986 with effect from 29 April 1988. Before this date, advisers didn't have to consider if a recommendation was suitable for a consumer's circumstances. Instead, they had to advise with reasonable skill and care, ensuring they didn't make mis-statements and that material information (if relevant) was disclosed.

The remaining point of dispute concerns the life cover provided by the policy which has been factored into Phoenix's redress calculation. I note the CMC refers to other complaints at this service which gave redress of a full refund of premiums, including the full cost of life cover.

However, no two cases are factually identical and that an ombudsman or investigator may have proposed different redress in a complaint with similar circumstances does not set a precedent nor does it compel me to reach the same conclusion. Instead, I must look at the evidence and reach a fair and reasonable outcome by making findings on the specific facts in this complaint.

Having done so, I find Phoenix's offer to be reasonable. Two and a half years after the policy began, Mr A married, and went on to have dependent children. And in 2006, he placed the policy in trust for the benefit of his family. Given these circumstances and the fact this was revisited by Mr A in 1992 when he was considering further life cover through a top-up policy, I don't find Phoenix to be unfair in accounting for Mr A having a need for the life cover provided by the policy from the point at which he had financial dependants. I say this particularly noting how it was relatively proximate to the original recommendation.

I do not believe it would be fair for Mr A to be refunded all the premiums he's paid to the policy, with interest. While he had no obvious need for the policy at the outset, within three years his circumstances had changed materially, whereby life cover would've become useful. And he has, from that point on, maintained the policy for almost 37 years.

I think it's therefore fair to conclude, on balance, that Mr A has wished to maintain benefits that he has seen as useful in terms of life cover. So, in my view, I don't believe it is reasonable for him to receive full premiums back whilst he has benefitted from the cover provided by the policy for almost four decades. Further, had Mr A passed away during that time, a claim could have been made under the policy.

### **Putting things right**

I believe the offer agreed to by Phoenix fairly reflects Mr A's overall circumstances and acknowledges that its adviser sold the policy to Mr A slightly earlier than he otherwise may have required. I say this in recognition that there will be no compensation due to Mr A, because the redress calculation is less than the total surrender value of the policy.

### **My final decision**

I uphold this complaint in so far as consider the offer made by Phoenix Life Limited to be a fair and reasonable resolution to the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 18 July 2022.

Jo Storey  
**Ombudsman**