

The complaint

Mr and Mrs G complain that Phoenix Life Limited has incorrectly administered their reviewable unit-linked whole of life policy, when applying annual indexation to the policy premiums and sum assured. They say this meant that when they came to make a claim in 2019, the policy's sum assured was less than it should have been.

What happened

Mr and Mrs G's policy began in 1992 through CCL Assurance Limited. Phoenix took over operation of the policy in 2006. It had an initial £22 monthly premium and sum assured of £42,991 and included critical illness benefit. The policy was also subject to annual indexation, so that the premium and sum assured would rise by the higher of 7.5% or the rate of inflation for the preceding twelve months.

In April 2008, the policy failed a review. At that time, Phoenix wrote to Mr and Mrs G with four options regarding amendments to either the premium or sum assured. This was because the current premium of £60.09 was not sufficient for the indexed sum assured of £136,693. One of the options was to reduce the sum assured to £76,100 and keep the premium unchanged – save for the annual indexation. This was the default choice as Mr and Mrs G did not reply to the review letter.

However, Phoenix made an error. It did not reduce the policy's sum assured as it should have, and left both the premium and sum assured unchanged. It also failed to notice that indexation had not been correctly applied from 2005.

In January 2011, Phoenix told Mr and Mrs G that it hadn't correctly reduced their sum assured in 2008, meaning an incorrect sum assured had been set out on the policy correspondence. It confirmed at that time that the correct sum assured was £87,943, not £157,964 for the current premium which was by this time set at £65.19.

In April 2011, the policy failed another review. The result, including the indexation increase, was that the planned premium of £70.07 would not sustain the policy's sum assured which was then £94,538. Again, Mr and Mrs G were given four options. They did not reply so the sum assured was reduced to £64,000.

Another review was failed the following year, and Mr and Mrs G this time opted to increase the premium to £80.21 to maintain the indexed £68,800 sum assured.

Reviews were thereafter failed in 2016, 2018 and 2019. The sum assured was reduced to £70,800, £63,800 and finally £64,100 in April 2019.

In June 2019, Mr and Mrs G made a claim for critical illness benefit under the policy on behalf of Mrs G. They were paid £64,100 plus net interest in October 2019.

In May 2020, Mr and Mrs G complained. They said their son had reviewed the claim payment and policy and raised some concerns about the issue Phoenix had raised in 2011. While the premium was indexed at 7.5% at that time (to £65.19) they believed Phoenix had

not carried out the indexation in the previous five years. This meant they had cause to question whether the sum assured used to pay the claim in 2019 was right or not.

In July 2020, Phoenix rejected the complaint. It accepted that from 2005 to 2011 the policy had not been properly indexed each year, as required. But the adjusted sum assured of £76,100 had been correct based on the premiums Mr and Mrs G had paid. It took the view that Mr and Mrs G had actually benefitted from a higher amount of cover for a lower premium until the error had been spotted in 2011. Thereafter the policy was correctly administered. It did not think Mr and Mrs G were owed any further payment.

Mr and Mrs G remained unhappy and brought the complaint to this service. They said their investment fund should not have diminished to pay for a higher level of cover than the premium at the time would have offered, but for Phoenix's error.

They had calculated that if indexation had been correctly applied, then their view was that the policy would have at least a sum assured of £74,700, less the additional cost of premiums – so they had been underpaid by over £8,300. And, if they had been correctly told about the issues with indexation and given reasonable information at the review stage, they also might have increased their policy premiums meaning a sum assured might have been as high as £300,000.

Phoenix initially said it did not consent to the case continuing, but this was on the basis that Mr and Mrs G had complained about the reviewable nature of the policy. An investigator from this service confirmed that Mr and Mrs G were not complaining that they did not know their policy could be subject to reviews. He therefore went on to consider the merits of the complaint.

Our investigator reviewed the complaint and felt that it should succeed. He said Phoenix's offer didn't go far enough to establish whether its error had impacted the policy's sum assured and the subsequent critical illness claim value. He therefore felt it should be recalculated to account for what would have happened if the indexation had been properly applied. If the claim value would have been higher, he felt the balance should be paid to Mr and Mrs G with interest, and a further £150 for the upset they'd been caused.

Neither party replied nor made further comment following our investigator's view. The complaint has now been passed to me.

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 also believe this complaint should be upheld.

Neither party disputes that Phoenix made an error in respect of applying indexation to Mr and Mrs G's policy. This applied to the policy years (1 April each year) from 2005 to 2010. The calculation date for the retrospective indexation was 9 January 2011 at which time Phoenix told Mr and Mrs G about the error.

However, I agree with our investigator that the information Phoenix has given - a mere calculation of the correctly indexed premiums which exceeded what Mr and Mrs G had actually paid - does not go far enough to resolve this complaint. I'll set out below how I believe this complaint ought to be addressed.

I should note that Mr and Mrs G have given some wide-ranging calculations which may

apply to them, depending on whether they had taken different choices at the times of the reviews. For clarity, annual reviews took place from 1 April 2005 until 1 April 2019. Of these reviews, the 2011, 2012, 2016, 2018 and 2019 reviews failed. It was only in 2012 that Mr and Mrs G chose to increase their policy premium to maintain the sum assured.

So, in my redress below, Phoenix must follow the same pattern (that being to increase the premium for one failed review and reduce the sum assured for four others) in order to rebuild the policy. I'll address the prospect of other reviews below in the section entitled 'putting things right'.

What I cannot assume is that for the four failed reviews (where Mr and Mrs G's policy was subjected to the default reduction in the sum assured) that they would have done anything differently. I do not believe the review paperwork was unclear – it set out why changes were required and that the policy was not sustainable without action. In the absence of a response to confirm a premium increase, the sum assured would reduce. So it does not follow that the sum assured would have been maintained on every review occasion.

However, notwithstanding the upset Mr and Mrs G have been placed under, the correct response to a mistake on the part of a business is to put a consumer in the position they would have been in, but for that mistake. I cannot assume that Mr and Mrs G would have chosen to pay additional policy premiums when they did not opt to do so in the intervening years after the indexation error was pointed out to them. Fair redress must look at what ought to have happened based on what both parties would likely have done; Mr and Mrs G did not increase their premiums on four of the five reviews and so the rebuilding of the policy calculation must follow that same approach.

Putting things right

Phoenix must rebuild Mr and Mrs G's policy from 1 April 2005 to the date the policy was settled in 2019. It must undertake a complete breakdown of all correct indexed monthly premiums and how these would have been used to purchase units in the policy's Century Managed Life Series C fund. It should also then assess the actual investment growth of the policy based on the underlying fund performance and the timing at which policy reviews would have been required, giving calculations for each review and indexed premiums and sum assured.

Phoenix can assume that Mr and Mrs G would have taken the same action as they did for the five reviews of 2011, 2012, 2016, 2018 and 2019. However, if any further reviews would have failed – because of the impact on the cost of the underlying units in the policy – then Phoenix should assume that Mr and Mrs G would have increased their policy premium to maintain the policy's sum assured. I cannot say what they otherwise would likely have done, but I do not believe Mr and Mrs G ought to be further penalised for the indexation error.

Phoenix should then supply evidence of the rebuilding of the policy to Mr and Mrs G. If this would have resulted in a higher sum assured at the date of the claim, it should pay this sum to Mr and Mrs G, less any additional premiums due (in the event of additional reviews beyond the five set out above) plus 8% simple interest.

If any redress is due to Mr and Mrs G and Phoenix considers it is legally obliged to deduct income tax from the interest paid, it should issue a tax deduction certificate with the payment. Mr and Mrs G may be able to reclaim the tax paid from HM Revenue and Customs, if applicable.

Finally, irrespective of the redress which may or may not be due, Phoenix should pay Mr and Mrs G £150 for the upset they have suffered. They say it has been distressing for them in

discovering that their policy may not have been operated correctly and may have impacted on them financially, at a time when Mrs G became seriously unwell. I believe £150 is a reasonable sum to reflect the upset and disappointment they have been caused.

My final decision

I uphold this complaint. Phoenix Life Limited must undertake the rebuilding of the policy with the correct indexation applied and if this results in redress, pay this to Mr and Mrs G, less premiums and plus interest. To this, it must add the payment for trouble and upset.

Should no redress be due, Phoenix must still pay Mr and Mrs G £150, within one month of acceptance of this decision. I make no further award or direction.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G and Mr G to accept or reject my decision before 14 October 2022.

Jo Storey
Ombudsman