

The complaint

The estate of Mr R has complained about Phoenix Life Limited's assessment of retrospective claims made under two hospital cash plans.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead, I'll focus on giving my reasons for my decision.

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.

Policy ending 730

The policy terms explain that a claim will be paid if the insured is admitted to hospital as an in-patient for treatment of an injury or sickness. 'In-patient' is defined as:

'means a person confined to hospital principally for the purpose of active remedial medical or surgical treatment and not merely for rest, nursing, convalescence, rehabilitation or extended care.'

The late Mr R had a fall in April 2015. He was admitted to hospital on 13 April 2015 and remained there until 5 May 2015. Phoenix Life has paid the claim for this period.

Mr R was then moved to a different hospital and remained there until 3 August 2015. Phoenix Life has refused to pay the claim for this period, as it does not think Mr R was an in-patient, as defined by the policy.

I've read the letter from Mr R's treating consultant to the second hospital. He asked if Mr R could be accepted for a period of rehabilitation. He confirmed the injuries that Mr R had sustained and said they had been treated. He said Mr R was fully weight-bearing, but needed help. The consultant repeated that he wanted Mr R to have rehabilitation, but confirmed he would review him in his fracture clinic until his injuries were healed.

I'm satisfied this evidence supports that Mr R's second hospital admission was principally for rehabilitation rather than medical or surgical treatment. I therefore find it was reasonable for Phoenix Life to conclude that the claim for the second hospital admission was not payable.

The representative for the estate considers the name of the policy to be misleading, as it is called a convalescence cash plan but does not provide cover for rehabilitation. I can appreciate the representative's point, but the policy terms explain what is covered and that the main aim of the policy is to pay benefit if the insured is confined to hospital for treatment for injury or sickness (this is referred to as convalescence benefit). However, if the estate has concerns about the sale of the policy because it considers Mr R did not understand what cover the policy provided, it should raise its concerns with Phoenix Life in the first instance.

Policy ending 867

This policy explains that if no benefit has been paid for 120 consecutive months, 100% of the premiums will be refunded.

As Mr R hadn't made any claims over that period, Phoenix Life paid him £366 in refunded premiums in 2016. It's for this reason that Phoenix Life refused to consider retrospective claims from 2015.

It's not known why Mr R didn't make claims to Phoenix Life in 2015. However, I've taken into account that he was elderly and may not have entirely understood at that time that he was entitled to make a claim. I agree with our investigator that it seems unlikely Mr R understood that the premium refund may be less than the amount he could receive in claims.

Whilst I appreciate Phoenix Life was technically correct to refuse to consider retrospective claims when it had refunded the premiums, I think it would be fair and reasonable in these circumstances for Phoenix Life to do so. If the claim/s are payable, then Phoenix Life can deduct the refunded premium from any settlement. I don't require Phoenix Life to pay interest.

My final decision

My final decision is that I partly uphold this complaint. I require Phoenix Life Limited to assess the claims from 2015 under the policy ending 867. If payable, then it can deduct the refunded premium from the settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr R to accept or reject my decision before 9 March 2023.

Chantelle Hurn-Ryan
Ombudsman