

The complaint

Mrs C is unhappy, in summary, as she doesn't think Phoenix Life CA Limited ('Phoenix Life') has correctly administered her reviewable whole of life policy that's held with it. And that the reviewable nature of the policy wasn't explained to her at the time of sale.

What happened

I've outlined what I think are the key events involved in the complaint below.

Mrs C took out a Reviewable Whole of Life policy in or around 1994 with Conferderation Life (then Sun Life Financial of Canada took over and now Phoenix Life is responsible for this complaint, so I will refer to the latter throughout) for a monthly premium of £20 with a sum assured of just over £55,000. This was on a maximum cover basis and it was subject to a review at the 10-year anniversary and then regular reviews every five years thereafter, although from a certain time period Phoenix Life chose to review this annually.

The policy 'passed' all its reviews, and the sum assured and premium remained the same, until 2022 when it 'failed' and the sum assured was reduced to just under £6,000. Although Mrs C wasn't made aware of this at the time, as the 2022 review letter wasn't sent to her due to what Phoenix Life has said was an issue with production. And it isn't in despite that Mrs C was first made aware the sum assured had reduced when she received her 2022 annual statement.

This led Mrs C to complain to Phoenix Life that she hadn't received the 2022 review letter and she said, in summary, that she wasn't told at the time of sale that the premium could increase and cover could decrease.

Phoenix Life sent its final response letter. While it didn't uphold her sale complaint, it recognised the 2022 review letter wasn't sent to Mrs C due to a production issue. It apologised for this and for her finding out from her annual statement that the sum assured had reduced. Unhappy with this, Mrs C referred her complaint to our Service and she added, in summary, that:

- When she took out the insurance no proper information booklet was sent to her, although Phoenix Life has said it was.
- The information sent to her in letters over the years was vague or gave no indication of what was needed to maintain the cover.
- She hasn't been told by what amount she'll need to increase premiums in future and she's worried about what will be quoted. She feels she has wasted the money paid over the years.
- It isn't good enough that the 2022 letter wasn't produced due to unforeseen issues and she didn't find out the sum assured had reduced until her statement.

And Phoenix Life has since clarified that the 2022 review letter with Mrs C's options won't be reissued to her. It said she hasn't been adversely affected by this, as should a claim arise she will continue to be covered until her next review for the previous higher sum assured of

just over £55,000, as it will honour that in light of its error but for the lower premium of £20 than this would have otherwise cost Mrs C at the 2022 review.

One of our Investigator's reviewed Mrs C's complaint. And when asked what she'd likely have done if she'd received the 'failed' review letter in 2022 and been told significant changes would be required, she said she would have considered keeping the policy. And that she hasn't cancelled it yet. Mrs C went on to say though that she didn't receive a proper review in 2022 and the policy won't pay out anything that she expected in the future, so it's worthless. And when we further asked Mrs C what she would likely have done, she said that if she'd been told sooner with better explanations then she would have considered if it was worth carrying on with the policy and that she has kept it.

Our Investigator went on to issue their findings. They said they didn't think the policy was unsuitable for Mrs C's needs. And, in any event, the crux of her sale complaint is that she wasn't told the policy benefits could change by as much as these did in 2022. Our Investigator said the policy is reviewable and the adviser likely knew the policy would need to change but not to what extent. And, in respect of the reviews and the way Phoenix Life managed the policy, they said they weren't asking it to do anything. They said Phoenix Life ought reasonably to have known since around 2010 that significant changes would likely be needed to the premiums or level of cover as Mrs C got older, as the cost had started to outweigh the premiums paid. And that Phoenix Life's correspondence didn't meet regulatory obligations and standards of good practice. But the Investigator said that, even if Phoenix Life had provided the information it should have, on balance they weren't persuaded Mrs C would likely have done anything differently. Although they said Phoenix Life should pay Mrs C £100 in compensation for failing to send her the 2022 review letter and for the surprise and upset at finding out the sum assured had reduced in her annual statement.

While Phoenix Life didn't agree with our Investigator's findings in respect of the content of its review letters sent to Mrs C over the years, it agreed to pay her £100 compensation for the error with the 2022 review letter.

Mrs C didn't agree. She said we seem to think she'd have kept the policy whatever happened, when she has explained she would have considered what to do. And that she thinks the £100 in compensation should be higher given the time she has had the policy for.

Our Investigator's view remained unchanged. They said they were of the view that, in the circumstances, Mrs C would most likely have kept the policy in the way she has.

In response, Mrs C said Phoenix Life didn't warn her correctly that the sum assured could decrease or the premiums increase, which shocked her. And that, as we've pointed out, getting life insurance at her age now is a lot more different, so to change everything would be much harder.

As no agreement could be reached, the case has been passed to me for a 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.

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And, having done so, while I understand Mrs C will be disappointed, I'm not asking Phoenix Life to do anything for the following reasons, which are largely the same as those

given by our Investigator.

The sale

It doesn't seem to be in dispute that Mrs C needed and wanted the cover at the time of sale. And Mrs C's complaint isn't that this was unsuitable for her needs in the circumstances. So I haven't considered that in any detail here, other than to briefly say for completeness that I think it's clear that at the time there was a want and need for the policy to provide sufficient cover for Mrs C's family – her husband and young children – if she were to pass away. So I don't think the recommendation was unsuitable in the circumstances.

Instead, I think the key issue here concerning the sale is that Mrs C feels she wasn't told the policy was reviewable and by how much the potential future changes would be.

I don't appear to have been provided with anything from the time setting out the adviser's full reasons for the policy recommendation. And the notes made about the recommendation made on forms I've seen from the time are brief and don't seem to detail any discussion about plan reviews. That being said, I'm conscious the sale happened over thirty years ago. And I think it's more likely than not that Mrs C was told the policy was reviewable given that's the nature of the product. And that she was likely given the policy terms, particularly when bearing in mind the policy schedule specifically referred to it being subject to the policy provisions.

I can see that the policy terms from when it was taken out set out that the policy is reviewed after the first ten years and every five thereafter by the provider to establish if the benefits can be maintained until the next review without the need to increase premiums. And if these can't be and the policy is likely to lapse before then, Phoenix Life can recommend an increased premium. So Phoenix Life is entitled to review the policy and its benefits. So I can't say that there were any misstatements or that Mrs C was given any guarantees that the policy wouldn't change over time.

The adviser may not have told Mrs C about the potential for *significant* changes in the future. But the scale of any changes wouldn't have been apparent to the advisor at the time as it was dependent on investment performance. I think all he could have done was to let Mrs C know the policy was reviewable and there could be changes. As this information was in the terms and conditions, I can't fairly say that relevant material information wasn't disclosed.

That being said, Mrs C's other main complaint concerns the reviews, the first failed review in 2022 and Phoenix Life's failure to send her that review letter. Phoenix Life had certain requirements relating to its ongoing administration of the policy. So I've considered below whether or not Phoenix Life treated Mrs C fairly by providing enough information when it should have to enable her to make an informed decision about the policy. To be clear, I've only considered the reviews up until and including the 2022 review and Phoenix Life's error with that here.

In considering what is fair and reasonable in all the circumstances of this complaint, I am required to take into account relevant law and regulations, regulators' rules, guidance and standards, codes of practice; and what I consider to have been good industry practice at the relevant time. Having taken all these elements into account, I've set out below what I consider to be the key factors.

Relevant considerations

In reaching my conclusions, I've considered, amongst other things:

- The FCA's Principles for Businesses, in particular Principle 6 and Principle 7 (PRIN).
- The FCA's Conduct of Business Sourcebook (COBS), in particular COBS 2.1.1R(1) and COBS 4.2.1R(1).
- The FCA's Final guidance on the "Fair treatment of long-standing customers in the life insurance sector" (FG16/8).

What is the fair and reasonable outcome in the circumstances of this complaint

I think it's helpful if I explain more about how the policy works and what I think Phoenix Life should have done, if anything. The key feature of this policy is that part of the premiums Mrs C was paying throughout the years were to be invested to pay for the increasing costs of life cover later in life. This is because for these types of policies, there's an increased likelihood of increasing life cover costs as the policyholder gets older. While Mrs C is unhappy with the effect of these increasing costs on the value of the policy, these are simply an inevitable consequence of the policy becoming more expensive as the policyholder gets older. This is very typical for these types of policies. It is also what allows these policies to be more affordable at the outset.

In the early years, when life cover costs are low, part of the premiums are invested to build up a fund that can be used to help pay for the increasing life cover costs in later years. At this stage, the premiums can meet the costs of the cover on their own. However, if the premiums remain at the same level, there inevitably comes a point where the life cover costs will exceed the monthly premium and units in the investment fund need to be sold to meet the shortfall, reducing the investment fund value over time – unless the fund's growth outpaces the rise in cover costs.

Eventually, regular increases in the cost of life cover will outpace the growth in the fund, so that as units in the fund continue to be sold, it will reach a point when the firm concludes that the premiums being paid and the fund value are no longer enough to pay for the costs of cover, as in Mrs C's case. To maintain the policy with its existing life cover, the premiums will need to increase substantially and will continue to increase each year as the consumers get older and the life cover costs increase accordingly, unless the sum assured has been substantially reduced.

At this point, there can be several poor outcomes for the consumer. It's possible that the investment fund will be almost completely depleted, leaving little surrender value. Any increase in premiums is likely to be very expensive and potentially unaffordable at a time when the consumer may be retired or close to retirement and have limited means to meet significant increases in costs. Alternatively, if the level of life cover has reduced substantially, the policy may no longer meet the consumer's objectives or ceases to be a cost-effective proposition.

The impact of the sudden and significant changes to the premium or level of life cover that occur at the point the policy fails a review, can be mitigated by adjusting the terms of the cover earlier in the life of the policy. If, for instance, a consumer elects to increase premiums some years before the policy is likely to fail a review, this will have a smoothing effect over time, so that the policy is less likely to fail a review and the sudden and dramatic premium increases down the track can be avoided.

This gives the consumer the chance to set premiums at a more affordable and sustainable level for a longer period – even for the rest of their lifetime. The new premiums will be higher than they were at the outset, but not as high as they would otherwise need to become at the point the policy fails its review.

Alternatively, at that earlier point, a consumer who is faced with significant increases in premiums or decreases in the level of life cover down the track might decide the policy itself is no longer cost effective, or that it is failing to meet its objectives, and elect to surrender the policy. In other cases, a consumer might decide that it is worth maintaining the policy on its existing terms right up to the point that the policy fails a review.

The opportunity for a consumer to make these decisions is a key event in the life of the policy. Given the impact of increasing life cover costs on the investment fund, and in time on the premiums (or sum assured), consumers have important decisions to make about whether to retain the policy, increase the premiums and / or decrease the sum assured during the life of the policy. Those decisions become more difficult the longer the consumer pays into the policy and the options available for mitigating poor outcomes start to diminish. So it is in a consumer's interest to make key decisions at an early stage in the policy's life cycle, and to do so in an informed way, firms need to provide consumers with clear, fair and not misleading information.

Increasing life cover charges and what should Phoenix Life have told Mrs C?

Looking at the available evidence, I can see that by January 2010 the total monthly cost of cover in this case was £19.97. By January 2011 that total cost was now just under £22 – having steadily risen in the preceding years – and therefore more than Mrs C's £20 monthly premium. And the cost of cover has continued to rise since. So, based on the available evidence, the policy has been costing more than the premiums paid since between 2010 to 2011.

Taking into account the regulatory obligations I have set out above (PRIN) and what I consider to be standards of good industry practice at the time (including the regulator's views as expressed in FG16/8), and in any event what I consider to have been fair and reasonable in the circumstances, I'm satisfied that Phoenix Life should have taken steps to ensure it communicated information to enable Mrs C to evaluate the impact of the increasing life cover costs on her policy and the options available to her in a clear, fair and not misleading way. This needed to include the risks, costs and benefits associated with those options, as well as giving clear timelines for the making of decisions where applicable.

In my view, this is something that Phoenix Life needed to do within 12 months of the tipping point being reached – and as I've said, I think it's likely this point occurred between 2010 to 2011. By giving Mrs C clear information about how much the policy was costing and allowing her to compare those costs with the premiums being paid, Phoenix Life would've been acting consistently with the guidance at FG 16/8 that firms provide "regular communications" with customers – and to ensure that, in their communications, that "firms [include] sufficient and clearly explained details regarding the performance of the product, its value and the impact of fees and charges". Such communications also needed to specifically set out the "value of any premiums paid in over that period", and "charges incurred over the period in monetary figures", including "major components and the charge to the customer for benefits such as life cover and guarantees".

What information did Phoenix Life give Mrs C?

In my view, communications once the tipping point had been reached should not reasonably provide information in a passive way that required the consumer to draw important inferences for themselves. Phoenix Life should've provided the information in a stark, clear form, including meaningful information about the options available to Mrs C at this point, together with the costs and benefits as well as time frames for reply. And if, for instance, precise numerical information about the costs of those options could not be given, then at

the very least I would expect to see reasonable approximations or illustrative examples so that the consumer could reasonably appreciate the importance of considering options at that point.

I've considered Phoenix Life's communications with Mrs C. Some information was being provided in the review letters and annual statements it sent to her, such as how long the policy was expected to last as things stood. But I can't see that she was made aware of how much the policy was costing until 2019, and neither was she given an explanation that the policy costs were higher than the premiums being paid.

Phoenix Life should have given Mrs C sufficient and clearly explained details for her to appreciate how much the policy was actually costing and that the gap between the premium and the charges had closed for her to make an informed decision. And the letters didn't give reasonable approximations or illustrative examples of her options, such as the premiums required to make the policy sustainable for life, for example.

Therefore, I think there was an imbalance of knowledge between Mrs C and Phoenix Life, which meant she couldn't make a fully informed decision about what steps she wanted or needed to take following the tipping point being reached. But, for the reasons given below, I'm not asking Phoenix Life to do anything.

What, if anything, would Mrs C have done differently?

Had Mrs C been given clear, fair and not misleading information, the options open to her at that point would have been to surrender the policy for the cash in value, increase the premiums to maintain the sum assured, reduce the sum assured or take no action.

On balance and for the reasons set out below, having considered all the submissions and information to decide what, if anything, I think would have likely happened if Phoenix Life had provided all the information it should have, I don't think it's likely that anything would have been done differently in the circumstances.

While Phoenix Life didn't provide Mrs C with all the information it should have done, some information was provided in the review letters she received.

The review letters and enclosed annual statements from 2010 to 2018 were similar. While the reviews 'passed', Phoenix Life said that at future reviews Mrs C would likely have to reduce the sum assured or increase her premiums to maintain the current benefits. Phoenix Life projected how long the policy might support the benefits for based on assumptions. And I can see that this projection consistently decreased over the years, from a maximum of eleven years in the 2010 letter to four years in the 2018 letter. The letters also said that if the projection showed the plan was unlikely to support the benefits for as long as Mrs C needed these then, unless she took action, it's likely this would fail a future review. And that as she'd be older when that happened, the cost of replacement benefits could be relatively high. Or she could increase her premium now to support her benefits for the whole of her life and it could provide a quote for that. So I think it was indicated to Mrs C how long the policy might be sustainable for based on the current premium, that this wouldn't maintain the policy for life and that she should take action if her needs were otherwise.

The review letters from 2019 to 2021 contained more information. Mrs C was told that at the next review it was likely she'd either have to increase the premium or reduce the sum assured. These said that her current policy might support the benefits for a maximum of three years in the 2019 letter, two years in the 2020 letter and one year in the 2021 letter. The enclosed statements also set out that Mrs C paid £240 in annual premiums and that the total policy costs were just over £518 in 2019, £576 in 2020 and £643 in 2021. The 2021

review letter also said that the premium was unlikely to be enough to maintain Mrs C's cover for much longer. That to do so her premium would likely need to go up each time it reviewed her plan. And Phoenix Life said Mrs C had two options – to keep things as they currently stood, or to increase her premiums now to limit the impact of the next plan review on the basis it had projected the premium would only maintain her current cover for one year.

So, as well as including projections as to how long the current premium might support the plan, the review letters and statements from 2019 onwards set out the total annual policy costs along with the total premiums paid. And I think it was reasonably clear from these that the total costs were exceeding the premiums. I also note that the annual statements sent with the review letters showed a year-on-year decline in the fund value since 2018, from £1,733 in 2018 to £504 in 2021. Along with a consistent year on year decrease in the total units held from just under 64 units in 2018 and just over 19 in 2021, for example.

So, as I've said, while Phoenix Life didn't provide Mrs C with all the information it should have done, some information was provided in the review letters she received. And, in making my decision about what Mrs C would likely have done, if anything, if all the information had been provided, I think it is reasonable to take into account her lack of response to the above warnings that she was provided with. And, in the circumstances, I'm not persuaded, on balance, that the provision of further information such as projection of future premium levels, would likely have made her take a different course of action.

I appreciate Mrs C has said she would have otherwise considered her options. But, as far as we were last made aware, as of May 2023 Mrs C had still retained the policy. And Mrs C had done so knowing the sum assured would likely reduce in future if her premiums didn't increase. As set out above, all the projections from at least 2010 onwards estimated that the policy would only last until around 2021/2022 at the latest. And the letters warned that as she got older, the costs of providing her benefits would increase and her premium was likely to increase in future and by a significant amount. The yearly statements from 2018 also showed that the policy's underlying fund was going down each year. But, despite the warnings and projections Mrs C previously received, she didn't take action to ensure the long-term sustainability of the policy, such as increasing the premiums to make it last longer, after being told repeatedly that it would only last for a certain period of time.

So I'm not persuaded that Mrs C would have taken a different course of action, such as surrendering the policy or taking any other steps to make it sustainable for life, if she had been provided with all the information that I previously set out by Phoenix Life. And this means I'm not asking Phoenix Life to do anything in the circumstances.

The 2022 review letter error

For the same reasons as those given above, I'm not persuaded Mrs C would likely have done anything differently if she had been sent the 2022 review letter. And Phoenix Life has recognised its error, apologised to Mrs C and confirmed it would honour the higher sum assured of just over £56,000 for the current premium of £20 should a claim be made before the next review.

I do, however, think it would have been unpleasant and frustrating for Mrs C to find out from her 2022 annual statement that the sum assured had been reduced. And for her to then find out she hadn't in fact been sent the 2022 review letter and that the sum assured had been reduced without her being given the chance to at least consider her options. I think £100 in compensation is a fair and reasonable amount in the circumstances for Phoenix Life to pay Mrs C to make up for that frustration though, when also bearing in mind Phoenix Life has recognised its error and sought to put it right as set out above. So I'm not asking Phoenix Life to do anything more than this.

My final decision

My final decision is that Phoenix Life CA Limited should pay Mrs C £100 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 29 September 2025.

Holly Jackson
Ombudsman