

The complaint

Ms U complains that Phoenix Life Limited mis-sold her a reviewable whole of life policy.

What happened

Ms U was advised to take out a reviewable whole of life assurance policy in 1990. The policy was set up on joint lives covering both Ms U and her ex-husband – it was later assigned to Ms U solely. The policy cost £26 per month and provided a sum assured of £60,422.

Ms U's policy was reviewed after ten years and then again every five years. In 2015, the sum assured had to reduce to around £58,000 unless Ms U opted to take out a top up policy. In 2020, Ms U's sum assured was reduced to around £34,000 and she complained. Ms U said she wanted a policy for life and understood this to be guaranteed.

Phoenix upheld Ms U's complaint. It said that whilst it felt Ms U wanted a whole of life policy, it didn't have anything to show why she was sold a reviewable policy. It gave her the following options:

- Convert the policy to a non-reviewable policy from inception. The premium would remain the same at £26 per month and it would provide guaranteed cover for £26,452. The surrender value was around £7,000.
- Convert the policy to a paid up policy which means no further premiums would be payable and the sum assured would be £13,618.
- Surrender the policy.

Phoenix also offered £50 compensation for the time it took to investigate Ms U's complaint.

Ms U was unhappy with these options and wanted the higher cover guaranteed. She referred her complaint to this service. Our Investigator felt this complaint should be upheld. She said that she believed it was more likely Ms U chose the sum assured rather than the figure being premium led. As such, she felt she should be put in the position as if she'd taken a non-reviewable whole of life plan for £60,422 cover from inception. The Investigator felt Phoenix should absorb the costs in doing so and Ms U can pay higher premiums of £57.59 per month going forward.

Phoenix disagreed. It said that it felt the sum assured was premium-led at the time, and that Ms U got the maximum amount of life cover she could afford with her budget. It didn't think it was reasonable to assume she'd have paid more than double the premium in 1990 for the same level of cover. It asked for an Ombudsman to reach a decision.

I sent out my provisional decision on 17 April 2023. In this I explained that I thought Phoenix's offer was fair and reasonable although I felt it should pay more compensation to Ms U for the distress and inconvenience caused. The reasoning for my decision is copied below and forms part of this decision:

"I've reached a different outcome to our Investigator. I think the offer put forward by Phoenix is fair and reasonable but that it ought to pay more compensation for the trouble and upset caused to Ms U. I'll explain why.

Phoenix has concluded that this policy was mis-sold because it didn't have the evidence to suggest why Ms U was sold a reviewable policy, nor could it evidence that she was told

about the reviewable nature. When it's concluded that someone was mis-sold a policy, we'd look to see what position they'd be in had the advice not been unsuitable. That's what I've thought about here.

Ms U has confirmed that at the time of the advice she was keen to get protection for her whole life. She had two young children and a mortgage. She'd recently suffered a bereavement which made her think about life assurance. So, I think it's likely she'd have always taken a policy which was supposed to run for the whole of her life.

Ms U has told us she and her ex-husband were financially secure, and weren't sure why the level of cover was selected but felt it was the right level. I've thought carefully about this. The premium she's been paying is £26. I think it's likely that this was the budget Ms U had at the time, and she was sold a policy that provided the maximum amount of cover for that budget. The level of cover Ms U had at the start wasn't a round number, and the policy she was sold gave her the maximum amount of cover possible for her £26 per month premium. For this reason, I'm persuaded in this case that the recommendation was driven by the premium.

It's clear Ms U wasn't expecting her sum assured to reduce to the extent that it has, although it's worth noting that if this policy was suitable for her needs, this is something that would've always happened. The policy she wants for the price she wants doesn't exist. And if we felt that she'd have done something differently earlier had she been aware that significant changes could happen in the future we'd likely consider whether she'd have surrendered the policy earlier. But Ms U has made it clear she wants a policy in place. And I find it unlikely she'd have got guaranteed cover for her whole life for any less than she was already paying.

Phoenix has offered to convert Ms U's policy into a non-reviewable policy. It worked out that had she taken this at that start, it would provide a sum assured of £26,452 for the same premium. I do appreciate that Ms U now would like to pay a higher premium for higher cover but to say this was reasonable, I'd need to be persuaded she'd have taken this at the outset. But I've not seen enough to persuade me that in 1990, with two young children, a mortgage and a very different economical climate, that Ms U would've paid more than double the premium that she did for the same level of cover – albeit non-reviewable.

I also don't think it would be fair or reasonable to ask Phoenix to absorb the costs of this for thirty years either. I am mindful also that Ms U hasn't reached out to ask Phoenix to increase her cover at either of her failed reviews in 2015 and 2020. Essentially, I'm not persuaded that Ms U would've taken a non-reviewable policy for the same level of cover in 1990 for more than double the premium she was happy to pay. And had she done so, I don't think it would be unreasonable for her to pay Phoenix the shortfall of premiums over the last thirty years in this case.

As such, I think the offer that Phoenix has put forward is fair and reasonable – and I intend to direct it to continue to provide Ms U with the option to convert her policy into a non-reviewable policy from inception. It will be up to Ms U to determine what she'd like to do going forward.

I can see Phoenix has offered £50 compensation for how long it took to respond to Ms U's complaint. Whilst I cannot consider complaint handling as part of my investigation, I can look at whether Phoenix's error has caused Ms U trouble and upset. Phoenix has accepted that it didn't think reviews were properly explained to Ms U at the time she was sold this policy. So when she received her 2020 review asking for significant changes to be made I can imagine this caused her a great deal of shock and upset. For this, I intend to direct Phoenix to award £250 compensation."

Responses to the provisional decision

Phoenix accepted my provisional decision and didn't provide any further comments. Ms U made some additional comments. Specifically she said:

- The Ombudsman has presumed that the policy was premium driven however they

were in a strong financial position

- The outcome has been reached without information surrounding Ms U's finances
- The decision to take out cover was based on life experiences

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 done so I've reached the same outcome as set out in my provisional decision – an extract of which is above and forms part of this decision.

I don't doubt what Ms U has told us about her and her husband's financial position at the time. But I had to determine, on balance, what I thought happened at the time on the available information. And looking at the sum assured and premium, I continue to believe it's more likely Ms U was looking to get the maximum amount of cover for a premium of £26. When I refer to £26 being Ms U's budget at the time this doesn't mean she couldn't afford more, but that I believe it's likely this is what was set aside at the time of sale – which was over 30 years ago.

Ms U hasn't provided any additional information to show me that she'd have paid more than double for the same benefit at the time to ensure it was non-reviewable. So, my findings remain the same on this point.

Overall, I think the offer put forward by Phoenix is fair and reasonable and I've not been provided with any evidence to suggest that Ms U would've paid more than double at the point of sale for a non-reviewable policy. My decision therefore remains the same as set out in my provisional decision.

Putting things right

Phoenix's original offer is fair and reasonable. It should now ensure the offer is open for Ms U to convert her policy into a non-reviewable whole of life policy for £26 per month with cover of £26,452.

Phoenix should also pay Ms U £250 compensation for the trouble and upset it has caused.

My final decision

For the reasons I've explained I uphold this complaint and direct Phoenix Life Limited to carry out the instructions set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms U to accept or reject my decision before 14 June 2023.

Charlotte Wilson
Ombudsman