

The complaint

Mr and Mrs A complain about a reviewable whole of life policy they have with Phoenix Life Limited (Phoenix). They say they have been given misleading information about the amount of life cover it provides. And they have been told that the life cover has been reduced to the minimum it can be, but it keeps on being reduced.

What happened

Mr and Mrs A have a reviewable whole of life policy. They pay a monthly premium into this policy and this is then invested by Phoenix. The costs of the life cover are taken from the fund the premiums have built up.

The policy is reviewed each year. This review determines if the premiums are high enough to support the costs of providing the life cover going forward. Phoenix says the review takes into account how much the policy is worth today, the expected payments, the effect of ongoing charges and the effect of investment growth over the remaining life of the policy.

The March 2021 review letter said that the policy had passed the review and so the life cover and premium would not need to change. This letter went on to explain that ongoing costs and charges may mean the policy doesn't have a value in the future.

In respect of the life cover amount, the review letter said *'The cover has reached the minimum amount so will not reduce any further.'* And later on in a policy summary section it said that the death benefit was £9,138 and that this is *'the minimum amount we would pay if either of you die'*.

After the review, I understand that Mr and Mrs A enquired about making a partial encashment from the policy. On 27 April 2021 Phoenix wrote to Mr and Mrs A and told them that the policy had a value of £5,321 and the maximum they could withdraw was £1,800. This letter said that the life cover was £9,138 and this was the minimum amount it would pay on death. But it also said *'the benefits provided by your policy and the remaining cash in value available will be affected when you take any partial cash in value'*.

On 6 May 2021, Mr and Mrs A spoke to a representative of Phoenix and they were firstly told that the withdrawal they were intending to make should not affect the sum assured (which implies that it could). But later in the call, Phoenix said that if the policy was at the minimum level of cover, then the amount of the withdrawal wouldn't reduce the sum assured further.

Mr and Mrs A then went on to make a withdrawal of £1,800 and the sum assured remained at £9,138. The policy then 'failed' its annual review in 2022. That is the review found that the policy premiums weren't high enough to support the life cover being provided. The life cover was then reduced to £6,623.

Following this reduction in the sum assured Mr and Mrs A made their complaint to Phoenix.

Phoenix considered Mr and Mrs A's complaint and responded to it fully in a letter dated 29 June 2022. It agreed that it hadn't acted correctly. It firstly said that the correct minimum

sum assured for this policy was £6,075 and so it shouldn't have referred to the minimum sum assured being £9,138. It went on to explain that the partial surrender they made in 2021 of £1,800 should have reduced the sum assured to £6,835. But it then would have passed the 2022 review. It explained that the sum assured could be reduced further towards the minimum amount.

Phoenix sent a cheque to Mr and Mrs A for £200 for the distress and inconvenience this situation had caused them.

There was some subsequent correspondence between the consumers and Phoenix, but no new issues were raised. Mr and Mrs A didn't agree with Phoenix's proposed resolution, so they brought their complaint to the Financial Ombudsman Service.

One of our Investigators considered the complaint and agreed that it was likely that Mr and Mrs A were misled. But he also concluded that there was enough information, in the letter of April 2021, for Mr and Mrs A to have been aware of the impact of a partial surrender on the sum assured. So, he thought that the £200 that Phoenix had offered was reasonable compensation for the errors that it had made.

Mr and Mrs A didn't agree with this and noted that the Investigator hadn't been able to listen to a copy of the call between them and Phoenix that took place in May 2021. They thought this should be obtained as it would support their complaint.

A recording of the call was subsequently sent to the Financial Ombudsman. Our Investigator considered this call and said that it does confirm that Mr and Mrs A were misled about the effect the withdrawal would have on the sum assured. But our Investigator still thought that Mr and Mrs A had enough correct information about the likely effect of the partial surrender on the policy sum assured to make an informed decision about the surrender. So, he didn't think any further compensation was warranted.

Mr and Mrs A maintain that they were misled, particularly in the telephone call they had with the Phoenix representative. They say they were told that the policy had reached the minimum sum assured and that taking the surrender would not affect this.

As no agreement was reached the complaint has been passed to me and I'm now issuing my Final 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.

I don't think it's really in doubt that Phoenix has made several errors in how it administered this policy. And it provided incorrect information to Mr and Mrs A on more than one occasion.

As I've outlined above, Phoenix incorrectly informed Mr and Mrs A that the minimum sum assured was £9,138. And that the policy sum assured had fallen to this level in March 2021. Shortly after receiving this incorrect information Mr and Mrs A asked about making a partial surrender from the policy. I'm assuming this was on the basis that the sum assured would not fall further.

And I agree that when they did this, in the telephone call of May 2021, they were told that the sum assured would not fall further. They say they acted on this information and as there was no reason not to make the withdrawal because the sum assured would not reduce further.

And this seems credible, and not an unreasonable thing to think given the information they had been provided.

I have seen other information, such as parts of the 2021 review letter that indicates the sum assured may still vary. And it's not clear if the Phoenix representative was talking about Mr and Mrs A's policy when she said was talking about minimum sum assureds, or just this type of policy in general. But, overall, I think that Mr and Mrs A were misled and they acted on this misleading information. And I don't think Phoenix disagrees with this.

But the terms of the contract are that the sum assured and premiums can vary. And given the withdrawal Mr and Mrs A took, Phoenix has acted correctly when it reduced the sum assured following the partial surrender. So, I don't think that Mr and Mrs A have necessarily lost out here. Whilst the sum assured from the policy has fallen; this is because they have made a withdrawal. And they have had the benefit of this withdrawal.

Mr and Mrs A should have been informed that the minimum sum assured their policy had was £6,075. And they should have been informed that making the withdrawal of £1,800 would likely reduce the sum assured the policy had to somewhere closer to this level. It's clear that they weren't given this information.

But I'm not persuaded that Mr and Mrs A would have done anything differently if they were given correct information. Whilst they were concerned about the sum assured, they clearly also wanted to make the withdrawal. As they did.

And I haven't seen anything to indicate that they want to be in the situation they would have been in had they not taken the withdrawal. That is, I'm not persuaded that they should repay the withdrawal to Phoenix in return for the sum assured being put back to the higher level. There wasn't, and still isn't, any indication that this is what they wanted to do.

So given all of this I think the £200 that Phoenix has offered is fair compensation for the errors that it made. Mr and Mrs A should accept this if they haven't already.

My final decision

For the reasons I've given above I don't uphold Mr and Mrs A's complaint.

Phoenix has made an offer to pay £200 to settle the complaint and I think this offer is fair in all the circumstances.

So my decision is that Phoenix Life Limited should pay £200. If Mr and Mrs A have already received this Phoenix doesn't need to pay it again.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A and Mr A to accept or reject my decision before 28 February 2024.

Andy Burlinson
Ombudsman