

The complaint

Mr P complained that the redress offered by Phoenix Life Limited in relation to a mis-sold endowment savings plan was unreasonable.

Phoenix Life upheld Mr P's mis-sale complaint about a plan sold to him by a predecessor business and it is now responsible for the sale. To keep things simpler, I'll just refer to 'Phoenix Life' as the business that sold the plan.

What happened

On the recommendation of an advisor, Mr P took out a unit linked endowment assurance (the 'plan') in May 1993. In return for paying in regular premiums which Phoenix Life would invest, the plan offered Mr P the potential to grow his wealth over the next 25 years and included a guaranteed death benefit along with critical illness cover ('CIC').

Some years later, Mr P was prompted to make contact with a claims management company (CMC) and this led to him complaining to Phoenix Life that he'd been mis-sold the plan.

Phoenix Life upheld his complaint. It said that it was unclear why Mr P would have needed the unit linked endowment and there was no evidence to suggest it was linked to a mortgage, but he had needed the life cover and CIC that the plan provided. Phoenix Life made a redress offer that didn't include compensation for the cost of the life cover and CIC.

Mr P disagreed with Phoenix Life's redress proposals and referred his complaint to our service through the CMC.

Our investigator was satisfied the formula used by Phoenix Life to calculate redress owed to Mr P was fair and reasonable and in line with guidelines issued by this service. So she didn't recommend that Phoenix Life needed to take any further action.

Mr P disagreed. In summary, the CMC said:

- the regulator had issued guidance relating to the mis-selling of endowment plans linked to mortgages which provided for the refund of premiums in full, with interest and without any deductions.
- Mr P had limited financial means and wished to take out a mortgage in future to buy his own house. The plan he was advised to take out meant he was tied into it for 25 years AND also compelled to use the plan to save for a deposit or repay his mortgage.
- He had no dependents at the time and if and when any kind of cover was required, that could have been addressed later if his circumstances changed.
- Mr P already had life cover of £50,000, costing £16 per month which he could have continued until he needed to review it. This plan cost him £38.20 per month doubling to £76.40 after 5 years and tied him into a plan for 25 years which had life and critical illness cover he did not need at that time.

The complaint came to me to decide. I issued a provisional decision.

What I said in my provisional decision

Here are some of the main things I said.

'The Financial Ombudsman Service doesn't always have power to investigate complaints about events that happened more than six years ago but Phoenix Life consented to us looking at this complaint. So I am satisfied this is a complaint I can consider.

The crux of Mr P's complaint is that redress Phoenix life has offered falls short of the amount he feels entitled to, as it doesn't include compensation for the life cover and CIC elements of the plan which he feels were also mis-sold.

The fact find document completed by the advisor at the point of sale was signed by Mr P so I consider it's reasonable for me to rely on this as an accurate record of what was discussed and agreed at the time. This shows that life cover and CIC were identified as priorities so far as Mr P was concerned. And I can understand why, as his circumstances suggested he would have a need for this sort of cover in order to provide the level of protection he told the advisor he wanted. I find Mr P wanted to include the life cover and the CIC in the plan and I don't think this made the plan unaffordable for him – especially as this was a low start endowment and he already had enough disposable income to cover the cost as the premium increased over the next five years.

Mr P cancelled his existing life cover when he took this plan, so I think he understood that this plan offered him all the cover he wanted at the time, at a cost he could afford – and it meant all his desired protection was included in one policy, relieving him of the additional administrative burden of having to maintain separate policies for different elements of protection.

For these reasons, I find the life cover and CIC were suitable for him. So although it's not in dispute that the plan was mis-sold, it's fair and reasonable that the redress he is owed in respect of the mis-sale needs to take this into account. Phoenix Life did this by deducting the cost of this cover when applying its redress formula, which seems reasonable to me.

As far as I can see, Phoenix Life has made an offer that is in line with what I would recommend if it hadn't already been proposed. And Mr P hasn't objected to the way Phoenix Life proposes to redress the investment part of the plan, so I don't need to say more about this except that I agree with the approach it has taken, which reflects the guidance on our website. Phoenix Life has provided its calculations to Mr P showing it will refund the premiums paid into the plan and compensate Mr P for lost investment opportunity, based on the likely return he could have expected if he hadn't wanted to take any investment risk in 1993. The plan is no longer in force so the benchmark has been applied from the start to the end date of the investment and simple interest at the rate of 8% per year added to the loss calculated, from the end date of the investment to the date of settlement.

As I am satisfied that Mr P wanted life cover and CIC included in the plan, and he had the benefit of this protection throughout the lifetime of the plan, it's reasonable that Phoenix Life has deducted the cost from the compensation amount and offset the maturity value of the plan paid to Mr P in January 2019. Overall, I find this is a fair way to put Mr P broadly in the position he should be in if the plan hadn't been mis-sold to him. And I've set out below what needs to happen now to put things right for Mr P.

In coming to my decision I've taken into account the representations sent in response to the investigator's view but these don't change the outcome. In particular, the guidance referred to isn't applicable to the endowment plan Mr P took out as it wasn't sold alongside or tied to a particular mortgage.'

What the parties said in response to my provisional decision

Mr P said he still felt the redress proposed was unreasonable, saying that buying a property was also a priority and given his modest income and limited scope for saving, locking up his savings up for 25 years and paying in over £21,000 in premiums into this plan wasn't suitable for him. With no dependents at the time, there was no need for immediate cover. It wasn't made clear that by having a low start plan the premiums would work out more than had a level premium one been selected from the outset.

Phoenix Life had nothing further to add beyond noting that my provisional decision reflected the terms of the offer it had made to Mr P before he referred his complaint to this service.

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'd like to thank both parties for all the information that has been provided about this matter and for responding to my provisional decision.

I've taken carefully into account everything that's been said in response to my provisional decision. I'd like to assure Mr P that I've thought carefully about everything again before coming to my final decision. And whilst I have highlighted above only what seem to me to be the main points of concern raised, I have read thoroughly and taken into account everything I've been asked to reconsider.

Mr P hasn't provided me with any new information that changes what I think about this case. I have addressed in my provisional decision all the points which have a bearing on the outcome. To sum up, Phoenix Life has already agreed that the main part of the plan was mis-sold so in my decision I've concentrated on the CIC and life cover. I found that these features of the plan matched Mr P's needs and circumstances and the CIC and life cover were suitable for him, for all the reasons set out more fully in my provisional decision. I appreciate that Mr P takes a different view to me. But I am satisfied that the redress proposed is fair and reasonable.

Putting things right

If it hasn't already done so, Phoenix Life should now pay Mr P compensation in line with the method of calculation it proposed, just keeping in mind that it will need to update its statutory interest calculation.

Phoenix Life should pay redress owed to Mr P within 28 days of being informed that Mr P has accepted the final decision.

My final decision

I uphold Mr P's complaint and Phoenix Life Limited should take the steps set out above to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 27 September 2023.

Susan Webb

Ombudsman