DRN-4817422

The complaint

The estate for Mr M complains that Phoenix Life Limited misled the late Mr M into accepting a settlement offer following an earlier complaint, without telling him that the policy would continue to be reviewable.

What happened

The late Mr M had reviewable whole of life policy with critical illness cover. In February 2021, after raising a complaint about the sale of the policy, Phoenix issued a final response.

It accepted that, based on the evidence available, Mr M didn't have a need for critical illness cover at the time of the sale – and so it agreed to refund the additional premiums he had paid for that cover, plus interest. This amounted to £9,556.86 which it offered to him in settlement of his complaint. The letter then said:

"*On receipt of your signed acceptance of my offer I will arrange for the plan to be amended to a death benefit only policy for a sum assured of £4,974 and a premium of £20.86 per month."*

The letter also gave Mr M referral rights to this service should he remain unhappy.

Mr M accepted the offer and his policy was amended in line with the letter.

In July 2021 Mr M's policy was reviewed. It gave him a number of options including increasing his payment to £47.18 per month (from £20.86) if he wanted to keep the sum assured at £4,974 or reduce the sum assured to keep paying the same premium. Mr M also had options to contact Phoenix and discuss potentially different options, stop paying towards his policy or cash it in.

In September 2021 Mr M received a letter confirming the sum assured had decreased to £2,389. The following year, the policy was reviewed again and the sum assured deceased to £2,185, at which point Mr M complained. He said that following his complaint about the mis-sale of the policy, and Phoenix Life's offer to put things right, he was under the impression that the death benefit aspect of his policy would not be subject to reviews.

Phoenix Life looked into the complaint, but didn't think it had done anything wrong. It said that Mr M's policy was reviewable and although it had accepted he shouldn't have been sold the critical illness part of the policy, it didn't change the reviewable nature of the policy overall. Otherwise, it would've said so in the letter offering Mr M compensation.

Mr M remained unhappy and referred his complaint to this service. During our investigation, Mr M sadly passed away and the executors of his estate are maintaining this complaint on his behalf.

One of our investigators looked into the complaint, but didn't think it should be upheld. In summary, he didn't think Phoenix Life had done anything wrong. He thought that Phoenix Life's letter offering compensation was clear on the terms and didn't say that the policy

would not be reviewable – and he thought subsequent information showed that the policy was in fact a reviewable one. And he thought that, overall, Phoenix Life's communications were fair, clear and not misleading. He also explained that Phoenix Life had carried a calculation which assumed Mr M surrendered his policy in 2021, and this showed that the estate would receive more in the payout of the claim than the amount it would've had had the policy been surrendered in 2021, premiums refunded and interest earned.

Mr M's estate didn't agree and asked for an ombudsman's decision. In short, it said:

- If the offer letter had been clear and the late Mr M had fully understood, he wouldn't have complained when the policy was reviewed again 2022.
- The policy booklet that confirmed the reviewable nature of the policy was sent three months after the compensation cheque;
- The calculation by the business should've started in 2019, when that previous complaint had been raised, not in 2021;
- The policy dropped in value considerably from February 2021 until the end of the year and this meant that the offer they had made to the late Mr M was false, with a sum that was never going to be paid.
- They asked for too much in premiums after they had agreed to refund the critical illness part of the policy and they used the annual review excuse because they realised they could not longer ask for £45.14 – so "the reduced offer was down to them having to accept a lower premium and mis-selling the policy in the first place".

As an agreement couldn't be reached, the case was passed to me to decide.

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 first extend my sympathies to the representatives of Mr M's estate. I acknowledge this has been a difficult complaint to pursue and I understand the issues they have raised and why they consider Phoenix Life ought to pay a higher level of compensation.

However, I don't agree that the late Mr M was misled by Phoenix Life's communications with respect to his earlier complaint about the sale of the policy. I say this because I think it would've been reasonable at the time to assume the main feature of the policy would remain the same, unless something was explicitly referred to in the letter. For example, the policy was now only providing life cover – so the letter said that "the plan [would be] amended to a death benefit only policy". But it didn't say that this would be maintained for life on a non-reviewable basis. And while I agree Phoenix Life could've said this in the letter, I don't think it was unfair of it not to have done so. I think it was reasonable for it to assume that it would be understood that all other features of the policy remained the same unless specified.

Furthermore, in September 2021 Mr M received a letter from Phoenix Life which confirmed that "the review of your lifetime security plan is now complete and the details are as follows" – this showed a sum assured that had now reduced to £2,389. So at this point, Mr M would've known his policy was reviewable. A few months later, in February 2022, Mr M's policy was reviewed again – and he was again required to make changes to the policy if he wanted to.

I acknowledge Mr M's estate's comments and I accept that Mr M's understanding, following his complaint in 2021, was that his policy had become non-reviewable. But I don't think he came to this understanding as a result of anything Phoenix Life did or didn't do, and so it wouldn't be fair and reasonable for me to conclude that Phoenix Life was at fault.

In terms of the premiums being paid, I can see that this was also raised in 2021 and Phoenix Life looked into the period when it continued to collect a higher direct debit, based on the policy still providing life cover and critical illness. I can see it apologised for the matter and, when it resolved it, refunded the overpaid premiums, plus interest and an amount for the trouble and upset the matter had caused the late Mr M – so I'm not persuaded this issue is relevant to what happened to Mr M's policy.

Phoenix Life has also carried out a calculation showing that, in any event, Mr M's estate has not lost out. Mr M's estate doesn't agree with how this calculation was carried out – it says Phoenix Life has used the surrender value from 2021, but it should go back to 2019 when the complaint about the suitability of the policy was first raised. I'm not persuaded this would be fair. If I thought that Phoenix Life's letter in 2021 was unclear, I wouldn't be reconsidering the suitability of the policy – I'd be considering what Phoenix Life's letter should've said in 2021. And then I'd need to consider what the late Mr M would've done if, for example, the final response letter from 2021 offered him compensation for the critical illness element of the policy and then also explicitly emphasised that the policy remained reviewable. If I concluded that Mr M would then have surrendered the policy, I'd be considering what the surrender value was at that point – not earlier.

So Phoenix Life has carried out this calculation and worked out the estate is better off.

Finally, in terms of the estate's comments about the premiums, I've not been persuaded to agree. I think it's clear that there was an issue initially in collecting the late Mr M's premiums and this was put right. When the policy was reviewed, Mr M's previous complaint or the outcome had no bearing – the policy was simply running out of units in the underlying fund because the costs of providing life cover were higher than the premiums being paid. Unfortunately, the late Mr M needed to pay more into the policy in order to sustain the same sum assured – as this isn't what happened, the lower sum assured was payable.

I understand my decision will be disappointing for Mr M's estate, but I hope it can see the reasons why I've reached it and that I've only done so after a careful consideration of all the facts and circumstances of the complaint.

My final decision

My final decision is that I don't uphold the estate of Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr M to accept or reject my decision before 9 October 2025.

Alessandro Pulzone

Ombudsman