

## **The complaint**

Mr C complains that Phoenix Life Limited mis-sold him a term assurance policy.

Mr C is represented by Mrs C.

## **What happened**

In April 2000, Mr C was advised to take out a term assurance policy by a broker. Phoenix is now responsible for complaints about that broker's actions. The policy provided life cover for Mrs C and was due to run for a term of 33 years.

Subsequently, Mr C complained about the way the policy had been sold to him. He initially complained that the policy was unsuitable for him and Phoenix sent him a final response to that complaint on 5 March 2014. The letter told Mr C he could complain to us within six months of the date of the letter and gave details about our service. Phoenix sent a further letter in 2016 which explained that it wouldn't be looking into Mr C's concerns about the suitability of the policy again.

In 2021, Mr C complained that he'd been led to believe the policy provided full life cover and he complained that he'd been recommended a policy which was linked to the Retail Price Index (RPI). Phoenix issued a final response to that complaint on 19 April 2021 – which again gave Mr C referral rights to our service.

Subsequently, in July 2023, Mr C made a new complaint to Phoenix. In summary, he complained that the policy was unsuitable for him; it had been the adviser's idea that Mr C should take out the policy; there hadn't been a premium breakdown; the policy was only supposed to run for 10 years and that the policy had only been sold to generate commission for the adviser.

Phoenix responded to Mr C's complaint in November 2023. In brief, it said that it had already considered the majority of Mr C's complaint points within its final response letters of 2014 and 2021. It stated that Mr C's policy paperwork had made it clear that the contract term was 33 years. And it said it'd seen no evidence that the adviser had recommended the policy simply for the purposes of obtaining commission. However, it acknowledged there'd been in a delay in it responding to Mr C's complaint and so it offered him £150 compensation.

Mr C was unhappy with Phoenix's response and so Mrs C asked us to look into his complaint. Phoenix told us that it didn't consent to us looking into any of the issues it had addressed in its final response letters of 2014 and 2021.

Our investigator explained to Mr C why he felt we couldn't look into any of the issues Phoenix had dealt with in its final response letters of March 2014 and April 2021, as he thought Mr C had complained about those points too late. The investigator therefore concluded that he could only consider Mr C's complaint points about the policy term and whether or not the sale had taken place for the purposes of generating commission.

And the investigator didn't think either of these points should be upheld. He felt the policy

documents made the policy term clear. And he didn't think there was evidence to show that the policy had been sold simply to generate commission for the adviser. He also thought Phoenix had offered fair compensation for any delay in responding to Mr C's complaint.

Mr C disagreed and so the complaint's been 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.

Having done so, whilst I'm very sorry to disappoint Mr C, I don't think Phoenix has treated him unfairly and I'll explain why.

#### *Jurisdiction*

First, I'd like to explain the parameters of this decision. As the investigator explained, Phoenix issued a final response letter to Mr C which addressed his complaint about the policy suitability in March 2014. It concluded that the policy hadn't been unsuitable for Mr C. The letter explained that if Mr C was unhappy with its response, he could complaint to our service within six months of the date of that letter. It also provided Mr C with our contact details.

And in April 2021, Phoenix sent Mr C a final response letter which addressed his complaint about the cover provided by the policy and about the decision to recommend a policy which was linked to the RPI. Again, Phoenix didn't uphold Mr C's complaint. And again, its final response provided Mr C with the right to refer his complaint to our service within six months of the date of that letter. Our contact details were clearly set out.

So Mr C needed to bring a complaint to us about the policy suitability by September 2014 in order for us to address that particular complaint point. And he needed to complain to us by October 2021 about the policy cover and the link to the RPI by October 2021. But he didn't complain to us about those issues until January 2024. The investigator explained to Mr C why he thought Mr C had brought his complaint to us too late under our rules. So he concluded that we didn't have the power to consider any of the issues addressed in Phoenix's final responses of March 2014 and April 2021. I can't see that Mr C has told us about any exceptional circumstances which prevented him from complaining about those issues in time. So I agree with the investigator's conclusions on this point. And this means that I will only be considering Mr C's complaint points about the policy term and the commission paid to the adviser.

#### *The policy term*

Mr C says that he believed he was only taking out the policy for a 10-year period. I've looked closely at the documentation from the time of sale and I've looked carefully at the policy schedule. In my view, the policy paperwork doesn't suggest that the term would be limited to 10 years. I say that because Mr C's policy schedule states that the term will be annually renewable each year until Mr C's 75<sup>th</sup> birthday. This was also explained in the demands and needs letter the adviser sent to Mr C after the sales meeting. And the illustration completed at the time of sale states that the term of Mr C's policy would be over 30 years. Mr C was subsequently sent an annual statement in 2010, which also stated that the policy would expire in April 2033. I'd add too that the policy could have been cancelled at any time if it was no longer right for Mr C.

On that basis, I don't think I could fairly or reasonably conclude that Phoenix misled Mr C as to the term of the policy.

### *Commission*

It's clear how strongly Mr C believes that the policy was recommended so that the adviser could generate commission. I've thought about this carefully.

I can see that a detailed fact find was completed which considered Mr C's financial needs. It seems the review was prompted because existing plans weren't performing well. So I find there was a reason for the adviser to review Mr C's circumstances and financial protection.

And I've seen a copy of the illustration completed by the adviser ahead of the sale going through, which set out how much the advice would cost. This stated:

*'How much will the advice cost?*

*The amount will depend on the size of the premium.*

*For organising this plan and to cover sales related costs including remuneration of its sales staff...(insurer) expects to incur total costs of:*

*Immediately: £112.00 In the second year and each year thereafter: £1.46.'*

In my view, the commission the adviser was likely to be paid was clearly set out on the illustration document and so I think it was likely disclosed to Mr C ahead of policy set-up.

The information shows that the fact, and level, of commission was disclosed to Mr C at the appropriate time to enable him to make an informed decision about whether to take out the policy, and the relevant costs of doing so. And Mr C decided to proceed on this basis

### *Compensation*

Phoenix offered Mr C compensation of £150 for delays in issuing its final response to his complaint. I don't find that Phoenix misled Mr C or nor do I think they sold the policy purely to generate commission. So I don't think I could reasonably direct Phoenix to pay anything more. And in my view, £150 is a fair and proportionate award to reflect any distress Phoenix's delay in sending its final response caused Mr C. If Phoenix hasn't yet paid Mr C this amount though, it must now do so.

### **My final decision**

For the reasons I've given above, my final decision is that Phoenix Life Limited has treated Mr C fairly and that it must pay him £150 compensation if it hasn't already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 8 January 2025.

Lisa Barham  
**Ombudsman**