DRN-5091420

The complaint

Mr C is represented by a claims management company ('*CMC*') in bringing his complaint. The CMC says Phoenix Life Limited ('*Phoenix*') mis-advised him into taking out a unit linked life assurance policy in April 1977 which were unsuitable for his circumstances.

In summary, it says Phoenix failed in its duty of care to Mr C as he was advised to place all his contributions into a high-risk property fund which had the potential to become illiquid. The CMC believes Mr C ought to be given appropriate redress for a mis-sold policy – that being returning the premiums he paid for the policy, with interest.

What happened

In April 1977, Mr C took out a unit linked life policy (the '*Abbey Ten Plus Plan*'). through Abbey Life Assurance Company Limited, which has since been acquired by Phoenix Life Limited and it takes responsibility for the complaint. For ease of use, I shall refer to the business as Phoenix in this decision.

The policy had a term of 20 years. It was split into ten segments, with each segment being severable. All the segments were invested in the Abbey Property fund. Each segment had an annual £35 premium, and the premiums were inclusive of Life Assurance Premium Relief.

In April 1993, the fund allocation was changed by Mr C from the property fund to Abbey's Managed Series 4 Fund for future contributions.

When the policy reached maturity in April 1997, a value of £11,911.10 was paid out to Mr C. He had paid a total of £6,107.20 (after Life Assurance Premium Relief) in premiums.

The CMC first complained to Phoenix in February 2024 about the sale of the policy. On 10 April 2024, Phoenix issued a final response letter in which it said the complaint had been made out of time. It referred to the Financial Conduct Authority rules governing this service, which say that a complainant has six years to complain from the date of the event or three years from when they become aware of their cause for complaint.

Phoenix noted the policy was sold more than six years ago. It also said Mr C knew – or should have known – in 1993 that he had cause the complain about the sale of the policy and the choice of investment fund, following his fund switch. However, the complaint wasn't made until April 2024.

The complaint was referred to this service, where it was progressed to an ombudsman. In September 2024, an ombudsman issued a decision on the complaint in which he concluded that it had been pursued within our time limits. Though the six-year limb of the time limits hadn't been met, the ombudsman felt there was not persuasive evidence to show the complaint was out of time under three-year time limit.

Though Mr C did complete a fund switch in 1993. there was limited evidence to explain what brought about this decision to make a fund switch, or whether it caused unhappiness with the original selection. He said based on the evidence available it seemed most likely that Mr

C became aware of his cause for complaint in 2024, when he approached the CMC.

The complaint was then passed back to our investigator. After he had completed his investigation, he concluded that the complaint should not succeed. He said that from the limited evidence available, he believed that Mr C was given a full description of the four funds that were available to him at that time and that he made the conscious decision to select the property fund for each of the ten segments of his policy. Nor did he otherwise believe that the recommendation had been inappropriate for the adviser to have suggested.

Phoenix had nothing further to add. The CMC said Mr C did not accept the investigator's findings, and it asked for the complaint to be referred to an ombudsman. In doing so, it made several further submissions, noting:

- It accepts that the sale of the policy pre-dated investment regulation.
- Nonetheless, it cannot be sure that Mr C was provided with the policy documentation as had been suggested by the investigator.
- In the CMC's view, the adviser didn't show any reasonable care towards Mr C.
- Mr C had no investment experience, and the CMC questions that the high-risk property fund was not a reasonable fit for a person in his circumstances.
- The annual contribution of £350 was a notable sum in 1977 and a degree of care applied to the recommendation, which does not appear to have been shown.
- The investigator had noted Mr C didn't make a complaint on maturity in 1997, but he made a profit and therefore wasn't aware he could do so.
- The fund switch taking place did not mean that Mr C understood the 1977 advice.

The complaint has now been passed to me.

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.

The sale of this policy took place almost 48 years ago. This was prior to the first investment regulatory framework brought in by the introduction of the Financial Services Act 1986 on 29 April 1988. So, the more recent standards by which this service would address the recommendation made by the adviser – such as suitability – do not apply here. Instead, the adviser was bound by common law which required him not to make any negligent statement about the investment being recommended, to disclose all material information relating to it and – where advice was given – act with reasonable care and skill.

In any event, I am not required to comment on each specific point or reach determinations on every individual submission put forward by the parties. My remit is to make independent findings on what I believe to be fair and reasonable to both parties in the circumstances; this does not follow a prescribed format. Instead, I will set out my reasons for my findings on what I consider to be the central issues in this complaint, based on the evidence before me.

Given how long ago this sale occurred, there is very little information available about what happen in 1977 – though Phoenix has been able to source the policy sales brochure, and fund information documents. I have considered these alongside the submissions from both parties. Where there is conflicting evidence, such as between the documentary evidence and what is being said by the parties now, I will determine what I believe is most likely on the balance of probabilities.

The Abbey Ten Plus Plan sales brochure explained clearly how the policy worked. It was

designed to build up a tax-free capital sum through a high allocation to units (up to 102%) of all premiums paid, and it offered life cover whilst the policy was in force. The investment was flexible and segmented to allow for partial surrender of one or more units.

The policy brochure also set out how "*you can select for your [policy] investment [to be placed] in one or more of the following funds, which all benefit from the management expertise of Abbey Life's investment division*". The four funds were Property, Equity, Managed and Money and a detailed explanation of the underlying asset classes for each fund was given along with an explanation of their operation and growth expectations.

I am not persuaded that this policy information was somehow withheld from Mr C at the time of the sale, and I've seen no objective evidence to suggest this was the case. I find it more likely that Mr C was given a sales brochure for the investment, given he chose to go ahead with it. Though there is no information available to suggest why Mr C later made a fund switch, he did so of his own volition in April 1993. Mr C could have opted to change the fund for his existing contributions, but he instead elected for only future contributions to be in the managed fund. On balance, I am satisfied that Mr C was more likely than not to have been provided with sufficient information to make that conscious choice. And I consider the fact Mr C retained the majority of his units in the property fund didn't suggest he thought there was a problem with the original decision to invest the segments into the that fund.

Further, I do not agree with the CMC's contention that the choice of fund entailed a lack of reasonable care or skill on the part of the adviser. The choice – as I've noted above – was for Mr C. And the policy documentation made clear that though from the outset the ten segments of the policy had the same premium, unit allocation and life cover, the fund choice was able to be flexed at every policy anniversary – something Mr C later chose to do.

I recognise Mr C will be unhappy that I've reached the same conclusion as our investigator and my decision won't be what he wants to hear. However, I am satisfied on balance that Phoenix's adviser ensured the policy was appropriate for Mr C. I haven't seen any evidence to suggest that Mr C was misled by the information he received or that the adviser behaved without reasonable consideration such that this complaint should be upheld.

My final decision

I do not uphold this complaint or make any award.

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