

The complaint

Mr J complains that he never received the cyclical review paperwork for his Whole-of-Life (WOL) protection plan that Phoenix Life Limited ('Phoenix') say they issued. Mr J states that because he wasn't informed of Phoenix's intention to reduce the plan's sum assured, he wasn't provided with the opportunity to increase his premium to maintain the level of cover.

Mr J says that following a critical illness claim on the plan, he received less than he was anticipating because the review had reduced the policy's benefits.

Mr J is a trustee (along with Mr C) of a trust that I shall call 'J Trust' within which the policy sits. They are represented by legal counsel but for simplicity, where possible, I'll refer to all submissions as having come from Mr J.

What happened

In October 2000, Mr J took out a reviewable whole of life assurance plan with Scottish Provident. The plan included both life and critical illness cover with an initial sum assured of £300,000 against a premium of £115.68 per month. In March 2006, the policy was placed into trust for the benefit of Mr J's children.

When Mr J's financial adviser arranged the policy, he opted to have the cover linked to the retail price index (RPI) to help maintain its spending power. To cover that benefit, Mr J's total premium would also alter in line with any inflationary increase in cover.

Given the plan was unit linked, Scottish Provident needed to undertake periodic reviews to ensure the anticipated returns from the investments along with Mr J's premiums were enough to meet the ongoing costs of providing the benefits. As is typical with these types of policies, reviews were scheduled to be undertaken prior to the tenth and then every fifth policy anniversary and then annually after the life assured reached age 70.

The first review was undertaken in August 2010, and then subsequent reviews were also undertaken in September 2015 and September 2020. The latter review set out that Mr J needed to increase his premium by an additional £285 per month to maintain the same level of cover (which by this point sat at £583,317), otherwise the benefits would reduce to £433,351. As Phoenix didn't receive a response to their letters, Mr J's cover was reduced accordingly.

On 20 June 2023, a successful critical illness claim was made on the policy and Phoenix paid out £509,941. Phoenix say the difference between the £433,351 and the £509,941 claim that was paid was a consequence of additional policies commencing to cover annual escalations.

Shortly afterwards, Mr J decided to formally complain to Phoenix. In summary, he said that he wasn't happy Phoenix had only paid £509,941 on his claim. Mr J went on to say that neither he nor his financial adviser received any review paperwork in 2020 and had they

done, he would've maintained the higher sum assured which he felt by that point would've risen to c£676,261. To resolve matters, Mr J asked Phoenix to pay him the difference between the two amounts, together with interest.

After reviewing Mr J's complaint, Phoenix concluded they were satisfied they'd done nothing wrong. They also said, in summary, that their records showed that the review paperwork had been sent in August 2020 and then followed up in September 2020, after not hearing anything back from him before any amendments were made to the plan. Phoenix said that as Mr J hadn't responded to their letters, the plan was altered accordingly in line with the policy terms. To acknowledge the delay in responding to Mr J's complaint and to take account of some administration issues around his direct debit, Phoenix offered £300 to say sorry which he subsequently rejected.

Mr J was unhappy with Phoenix's response, so he referred his complaint to this service. The complaint was then considered by one of our Investigators. He concluded that Phoenix hadn't treated Mr J unfairly because from what he'd seen, they were able to demonstrate that the review paperwork had been sent.

Mr J's representative, however, disagreed with our Investigator's findings. In summary, they said:

- The crux of the complaint is that neither Mr J nor his IFA received the review paperwork. The fact that Phoenix contends it was posted is irrelevant as it is receipt which is the relevant factor.
- They'd seen nothing within the FOS website that set out our position around the issuing of documentation and specifically, that this service only requires a business to prove that they sent the paperwork.
- A requirement to only prove the paperwork was sent is not in accordance with the legal position which requires the paperwork to actually be received.
- As Mr J hadn't received the paperwork, that means Section 8 – General Provisions and Definitions – clause 2 was not engaged as there was not in fact a notification to the policy holders of the review.
- There is no need for the Ombudsman to actually consider what Mr J would have done had he received the review paperwork.
- Phoenix have not made any suggestion that they also sent the review paperwork to the other trustee, Mr C. He was also therefore deprived of the opportunity to take action.
- The FOS website states that decisions are made which aim to be "fair and reasonable in all the circumstances" – however, that approach doesn't permit FOS to ignore the law of the land.

Our Investigator was not persuaded to change his view as he didn't believe Mr J's representative had presented any new arguments he'd not already considered or responded to. Unhappy with that outcome, Mr J's representative then asked the Investigator to pass the case to an Ombudsman for a 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 have summarised this complaint in less detail than Mr J has done and I've done so using my own words. The purpose of my decision isn't to address every single point raised by all of the parties involved. If there's something I've not mentioned, it isn't because I've ignored it - I haven't. I'm satisfied that I don't need to comment on every individual argument to be able to reach what I think is the right outcome. No discourtesy is intended by this; our rules allow me to do this and it simply reflects the informal nature of our service as a free alternative to the courts.

My role is to consider the evidence presented by Mr J and Phoenix in order to reach what I think is an independent, fair and reasonable decision based on the facts of the case. In deciding what's fair and reasonable, I must consider the relevant law, regulation and best industry practice. Where there's conflicting information about what happened and gaps in what we know, my role is to weigh up the evidence we do have, but it is for me to decide, based on the available information that I've been given, what's more likely than not to have happened. And, having done so, I'm not upholding Mr J's complaint – and it's largely for the same reasons that our Investigator has already set out. I'll explain why below.

From what I've seen, it would appear that the August and September 2020 review and follow-up letters were correctly addressed to Mr J by Phoenix. I say that because those letters both include the same home address that he's recorded on the form submitted as part of his complaint. In addition, the August 2020 letter that Phoenix state they sent to Mr J's IFA, also appears to be correctly addressed to the adviser as well.

Having looked at the content of those letters, I'm satisfied that Phoenix's messaging is clear – that is to say, that following the review that Phoenix have undertaken, if Mr J were to take no action, the level of cover provided under the plan would reduce in line with the conditions of the policy.

I've looked at Royal Mail's website from August and September 2020 when Phoenix state they issued the review letters to Mr J and his financial adviser. Despite the disruption caused from the coronavirus, it would appear that on most days, normal deliveries and collections took place in all parts of the UK. In addition, there's no evidence of any industrial action during that window that may have impacted the delivery of Phoenix's letters to either Mr J or his adviser.

Phoenix is one of the country's largest long-term savings and pensions providers. Whilst I'd be speculating if I were to try and place a number on the volume of letters that a firm their size issues each month, I well suspect it runs into the thousands, most of which, would be automatically generated. And, given those volumes, I don't think it would be practical, or reasonable to expect Phoenix to track and then record the delivery of every single piece of mail it issues to prove that delivery to the customer was successful. And, I'm not aware of any major financial services business that does track the delivery of their bulk mail items, so just because Phoenix can't prove that Mr J or his adviser received their August and September 2020 letters, in my opinion, it doesn't therefore follow that they've done something wrong.

In any event, I can think of no plausible reason why Phoenix would generate review letters, add them to Mr J's records and then not post them out; particularly when it's in their commercial interest to issue those review letters because in doing so, it could very well lead to new business income for them.

For me to be able to make an award to Mr J, I'd have to be satisfied that Phoenix have done something wrong. The policy terms of the WOL dictate that Phoenix have to undertake the cyclical reviews and issue them to the customer, and from the evidence presented to me, they've done just that. Whilst Mr J states that he never received either of Phoenix's August or September 2020 letters, I'm satisfied that on balance, it's more likely than not they were sent.

Mr J's legal representative states that Phoenix have not made any suggestion that they also sent the review paperwork to the other trustee, Mr C. They went on to say that Mr C was also therefore deprived of the opportunity to take action - but I don't agree. The life assured on the plan is Mr J, and from what I've seen, he's the primary contact (as he set the plan up) so I don't think it's either unusual or unreasonable for Phoenix to focus its correspondence towards him on the basis that he'll share that insight with Mr C in his duty as the other trustee. In any event, Phoenix had a secondary individual that they corresponded with – Mr J's adviser, so I can't conclude that Phoenix have done something wrong just because they didn't also write to Mr C.

Mr J's legal representative has explained that they'd seen nothing within the FOS website that set out our position around the issuing of documentation and specifically, that this service only requires a business to prove that they sent the paperwork. I should explain that given the breadth of products and issues that this service covers, our website isn't intended to provide detailed guidance on how we might view a particular set of circumstances. Consumers can however view decisions that have been issued which may give wider information on the area of interest on the website.

Mr J's legal representative has also highlighted that the FOS website states that decisions are made which aim to be "fair and reasonable in all the circumstances" – but they say that approach doesn't permit FOS to ignore the law of the land. They went on to say that a requirement to only prove the paperwork was sent is not in accordance with the legal position which requires the paperwork to actually be received. This service operates as an independent body to resolve disputes between consumers and businesses, quickly and informally. The decisions I make are not strictly bound by the letter of the law in the same way a court might be because I am also guided by the evidence presented to me and what's considered to be fair and reasonable in the circumstances of the case. This approach allows me to take account not just of the law, but industry regulations and codes, best practices along with the specific circumstances of each case.

As I'm satisfied that it's more likely than not that Phoenix issued the review paperwork for the WOL, it therefore follows I'm of the view that they fulfilled their obligations under the terms of the plan to notify Mr J of the review that had been undertaken with the associated changes to the sum assured. As such, as I've not been able to conclude that Phoenix have done anything wrong, I'm not upholding the complaint.

To acknowledge the delay in responding to Mr J's complaint and to take account of some administration issues around his direct debit, Phoenix offered him £300 to say sorry. I see no reason to comment on this as I'm of the view the £300 is not linked to the specific issue of whether Mr J received Phoenix's review letters (which is the complaint that he raised with this service). Should Mr J wish to take advantage of Phoenix's offer, he should contact them directly to understand if it is still available.

My final decision

I'm not upholding Mr J's complaint that he's raised as a trustee of J Trust, and as such, I won't be instructing Phoenix Life Limited to take any further action.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mr J as Trustees of the J Trust to accept or reject my decision before 22 April 2025.

Simon Fox
Ombudsman