DRN-5106797

The complaint

Mrs S and Mr S complain about Phoenix Life Limited's management of their reviewable whole of life policy. They complain that Phoenix Life Limited didn't review their policy properly and failed to let them know at an earlier stage that the policy required changes to be sustainable for life.

What happened

Mrs S and Mr S took out a unit linked RWOL policy in 1989 to protect their family from any potential inheritance tax liability (IHT). The policy was written in trust, on second death basis, for a sum assured of £129,000 and a premium of £30 a month. The policy was reviewable at regular intervals, during which Phoenix was required to assess the premiums being paid, the charges on the policy, the value of the investment fund and the overall sum assured.

The policy was first reviewed after ten years and then further reviews every 5 years until 2019. At each of those reviews, Mrs S and Mr S were told that no changes needed to be made to the policy. In 2023 the policy was reviewed again – but at this point, Phoenix explained that changes needed to be made to the policy in order for it to be sustainable. Mrs S and Mr S needed to increase their premium to around £200 per month, or reduce the sum assured to just over £76,000.

Mr and Mrs S complained to Phoenix about this review. Phoenix looked into their concerns but, in summary, didn't think it had done anything wrong, so Mrs S and Mr S referred their complaint to this service.

One of our investigators looked into their concerns. He agreed that Phoenix's standard of communications over time wasn't fair, clear and not misleading and was not aligned with the relevant regulatory standards. He found that Phoenix would've been aware, at various points, that the policy would not be sustainable for life on its current terms – particularly in 2013 when the life cover costs exceeded the premiums being paid. He thought that its review letters and annual statements didn't set out the information they should have, in line with the relevant standards, and therefore denied Mrs S and Mr S opportunities to make informed decisions. However, the investigator considered whether Mrs S and Mr S would've done anything differently. He considered the information Mrs S and Mr S *were* given, as well as their reason for taking out the policy, and concluded that they wouldn't have done anything differently.

Mrs S and Mr S didn't agree and provided detailed comments in response. In summary, they complained that Phoenix ought to have considered increases to their premiums much earlier and didn't.

They said the evidence showed that "even modest increases" would've allowed them to avoid the 2023 review and the limited options available.

They said Phoenix had mismanaged their policy and relying on fund values alone to explain what had happened was not reasonable. They said that Phoenix ought to have linked their premiums with the value of the fund and this would've allowed their contributions to increase

over time. They said that if premiums had increased at regular intervals, they could and would have budgeted for the extra expense – they were now being penalised due to Phoenix's negligence.

They said that they had always accepted their premiums were reviewable and could increase, but expected such increases to occur in an "orderly and timely manner, subject to the limits expressed in the policy document" (which they said showed their premiums couldn't increase by more than 20%).

They also said that if they had known from the outset that in future their premium might rise by 585%, they would not have gone ahead with the policy. They believed that the policy had been mismanaged and Phoenix hadn't assessed risk properly as a result.

In terms of the need for the policy, they said their objectives hadn't changed – they still had a need for the policy to cover potential IHT and would not have cancelled it "midway" because of that.

Mrs S and Mr S said that they'd been treated unfairly and the increase in the premium requested by Phoenix was not fair and reasonable.

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 thank Mrs S and Mr S for their detailed submissions, which I can confirm I've read and considered in their entirety – even if I've only briefly summarised their main points above.

I also completely understand their concerns and why they have raised the complaint that they have – there's no doubt that facing such a significant increase in the premium required to maintain their policy would've come as a shock.

I should say firstly that Mr and Mrs S's policy has worked the way it was intended. The cost of providing cover isn't fixed and instead increases over time as the lives assured get older. From the inception of the policy, the difference between the premiums being paid and the charges results in an investment pot being built up. The difference between the sum assured and the value of the pot is referred to as the sum at risk, and it is this figure that is used to calculate the charge for providing cover.

Over time, businesses will undertake reviews to ensure that a policy can continue to provide the chosen level of cover. They will look at a number of different factors such as the size of the investment pot, current mortality rates and investment performance. If they decide the policy isn't sustainable at its current premium, the consumer will usually be offered the option of reducing the sum assured or increasing the premium. This happened on Mrs S and Mr S's policy.

In terms of the investigator's findings about Phoenix's communications, I have nothing further to add. I agree that over the years, the relevant standards required Phoenix to ensure that important communications about Mrs S and Mr S's policy were fair, clear and not misleading – including "sufficient and clearly explained details regarding the performance of the product, its value and the impact of fees and charges". For a policy like the one Mrs S and Mr S had, this should've included "the value at the previous communication date and the

value of any premiums paid over that period" as well as the "charges incurred over the period in monetary figures" including "a breakdown of the major components and the charge to the customer for benefits such as life cover and guarantees" (FG 16/8 Fair treatment of long-standing customers in the life insurance sector).

I've seen insufficient evidence that Mrs S and Mr S were given this information at key times during the life of the policy.

However, although I understand this will come as a disappointment to Mrs S and Mr S, this isn't enough for me to uphold their complaint and award compensation.

In order to conclude that Mrs S and Mr S have been caused a loss, I need to find that they would've been able to make adjustments to their policy, over time, in a way that would've avoided the situation they now find themselves in. In determining this issue, I've taken into account their detailed submissions, including that they would've paid extra had they known the situation with their policy.

But I also have to bear in mind what information they *were* given about the policy as well as the fact that during the relevant period, there would've been no comparable policy that would've allowed them to benefit from that level of cover for such a low premium.

In terms of what Mrs S and Mr S were actually told, I can see that the reviews did provide some information. For example, in 2014 Phoenix did explain that "as you get older, the cost of providing the protection benefit rises". It also explained that "it is possible that the true cost of your life cover may already exceed the premium you are paying or may start to do so at some point in the future". It explained that the unit value of the plan could allow "your life cover to be maintained even where the cost of your life cover is greater than the premium you are paying". Further, the letter also said that even "if you increase your premium or reduce your cover as requested and all our assumptions are born out in practice then it is likely that another increase in premium or reduction in cover may be required at the next review".

In 2019, the letter set out the above information and explained that no changes were required. However, Phoenix explained that it had "looked at what might happen if the premiums and charges on your policy continue as they are now into the future" and estimated that Mrs S and Mr S's "policy may not be able to support your level of protection benefits from about December 2023". So this letter was clear that changes would be required in the medium term – but Mr and Mrs S didn't do anything differently on receipt of this letter. They didn't seek to amend the premium in order to mitigate the potentially significant changes in December 2023.

In addition, the annual statements also showed the number of units held in the fund and what it was worth. Due to the growth of the investments, the fund did continue to grow over that period – but the number of units held was reducing. For example, the statement from 2018 showed the number of units held in the investment fund going from 684 to 661 – showing that units in the fund had been sold in order to cover the charges.

This doesn't change my overall assessment of Phoenix's communications – they should've been clearer and the situation with the policy ought to have been brought to Mrs S and Mr S's attention earlier than 2023. But at the same time, I am required to weigh up what Mrs S and Mr S did over the years, when they received these letters, in order to determine what if anything they would've done differently had they had more information.

What all this means is that when deciding how to put things right in this case, I'm not persuaded there's sufficient evidence to conclude that Mr and Mrs S could or would've done anything to avoid the situation they now find themselves in. And it's important to emphasise that this doesn't mean the policy has failed or hasn't delivered – it has continued to provide the relevant protection to Mr and Mrs S, albeit at a significantly increased premium since 2023. It is a feature of these policies that the cover becomes considerably more expensive as the lives assured get older and that changes are therefore likely later on in life. In this case, whilst I accept the changes required to the policy in 2023 were significant, they were partly so significant because the cover being provided until that point was much cheaper than any of the alternatives. And I think this is key.

Whilst it's possible that Mrs S and Mr S may have decided to increase their premium at the time, it's also possible that they might not have seen the need to do so.

The premium they were paying was so much lower than any comparable policy, for that sum assured, that they would've had no particular need to increase it in 2013 – and Phoenix wouldn't have encouraged or advised them to do so, it merely ought to have given them enough information to allow them to understand the situation for themselves. And in my experience, the premium required in 2013 to guarantee the policy for life would've likely been around the same, if not more, as what Phoenix asked for in 2023. Given everything I've seen on file, I think it's unlikely Mrs S and Mr S would've proactively sought to increase their premium by so much, unless they had no other choice – and in 2013, the policy was still on track to be sustained for another ten years.

I've also considered whether Mr and Mrs S would've considered surrendering the policy at the time, but I don't think that's likely either. Mr S has been clear in his submissions that they have an ongoing need for the policy and had one back then. Whilst he is unhappy now with the premium being required, in 2013 that premium was lower than any other comparable product for the same sum assured – so there's insufficient evidence for me to conclude that they would've considered surrendering the policy then, on the basis of the premium increasing at a future review.

I've considered Mr S's evidence about how the premiums could've risen over time and what that would've meant for them. I understand why they say they never knew there was an issue with the policy, given what they were being told at the reviews, but at the same time the 2019 review clearly did suggest changes would be required four years later – yet Mrs S and Mr S didn't take any action as a result.

Furthermore, Mrs S and Mr S also wouldn't have known when or if they would need to make a claim at any point.

Ultimately, one of the key reasons why Mrs S and Mr S are now being required to increase their premiums by so much is because the cost of life cover has continued to increase. But I've seen no evidence to show the calculation of the cover charge was not a legitimate exercise of Phoenix's commercial judgment. Phoenix was entitled to take a reasonable view of the risk the policy posed to it and, on a commercial basis, put a price on that risk. And it did so following a typical process, run by industry professionals, which were subject to oversight and regulation.

Finally, Mr S has made reference to what he claims is a clause in the contract that prohibits the premium being increased by more than 20% - as a result, the increase required in 2023 was in breach of contract.

However, I'm not persuaded that's correct.

The clause Mr S is referring to is specifically to do with the option Mr and Mrs S had, throughout the life of the policy, to increase their premium by up to 20% to benefit from a corresponding increase in sum assured – allowing them to combat the effects of inflation on the value of the sum assured. This clause doesn't govern all possible premium increases due to the costs of the policy increasing over time. Furthermore, it specifically makes reference to the greater of either 20% or the yearly rise in the retail prices index, clearly demonstrating that this clause is about helping the policy mitigate the effects of inflation rather than setting a maximum percentage by which the premium can increase.

For all these reasons, I'm not persuaded Mrs S and Mr S's complaint should be upheld. In my view, even with more comprehensive communications, Mrs S and Mr S would likely not have done anything differently, because they still would've wanted to benefit from the highest level of cover at the lowest premium – and this is what they had.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mr S to accept or reject my decision before 9 January 2026.

Alessandro Pulzone
Ombudsman