

The complaint

The trustees of the R Trust, Mr C and Mr R, have complained that Phoenix Life Limited ('Phoenix'), after issuing a refund of premiums, didn't provide the necessary information for details of the refund to be checked.

To put the matter right, the trustees want a full accounting of the overpayments so they can be independently verified, reimbursement of the sums paid and corrected policy information and review documents. They would also like professional costs incurred and compensation for the distress caused.

The trustees are represented in bringing the complaint but for ease of reading I will refer to Mr R throughout my decision.

What happened

In 2002 Mr R took out two reviewable life assurance policies with a predecessor business of Phoenix. There was a sole policy for Mr R with a sum assured of £1.5m for an initial monthly premium of £451.41. There was also a joint policy with Mr R's late wife with a sum assured of £3m for an initial monthly premium of £97.74.

In March 2022 Mr R found that his monthly premiums had increased from £4,000 to £8,064.31 without any notification. He contacted his financial adviser – who I shall refer to as 'Mr J' in my decision – who in turn contacted Phoenix and a complaint was made in June 2022. Phoenix issued its final response on 9 September 2022.

It apologised for the increase in premiums and that concerns weren't resolved in a timely manner. The overpayments were being refunded to Mr R plus late payments interest at a rate of 8% and a letter would be issued detailing the repayments. The cover was still in force, it was trying to resolve the issues and the corrected policy statements and reviews were to be generated. It offered £460 for the inconvenience caused, postal costs and the delay in responding to the complaint.

Mr R employed the services of a solicitor and correspondence continued in September and October 2022 and further complaints raised as the issue hadn't been resolved. In November 2022 Phoenix confirmed the refund of £34,269.67 and provided calculations for the late payment interest and a breakdown of the refund for each of the 25 policies. The policies were to be put right manually by its actuaries, but this would take a few weeks.

A clear breakdown still hadn't been provided by February 2023 and the solicitor didn't agree the late interest payment figure. Corrected policy information hadn't been received and a further review had been received but the figures were incorrect.

In March 2023 Phoenix confirmed that the issues with its systems hadn't been resolved but in the event of a claim the benefits would be paid. The late payment interest had been paid net of tax and a reclaim of that could be made via HMRC. It wouldn't pay any solicitor fees incurred but would consider a claim from Mr J. It increased its total award further to previous offers to £2,000.

Further correspondence continued and remaining dissatisfied, Mr R brought his complaint to the Financial Ombudsman Service. Our investigator who considered the complaint didn't think Phoenix needed to do anything more. She said;

- Phoenix had provided a spreadsheet of its refund calculations, which she included and explained. She concluded the refund had been made correctly and the breakdown was clear as to how it was calculated.
- Phoenix had previously provided a breakdown of its late payment interest at a rate of 8% which this service recommended. Phoenix could also provide the necessary form to reclaim the tax paid from HMRC.
- This service rarely made awards for professional fees – this service was free for a consumer to use – so wouldn't be considering a refund of fees to the financial adviser or solicitor.
- Phoenix had explained its systems were still being worked on and while it was frustrating, it was outside of its control. If Mr R had any concerns about policy review outcome decisions in the future, he should make a separate complaint.
- The policy was in force and ongoing issues wouldn't impact on a claim.
- Phoenix had already recognised that the service provided was not up to its usual standard and offered a total award of £2,000 which was more than this service would recommend.
- The investigator expected Phoenix to keep Mr R updated about resolution to the system issues and to provide accurate statements and revised policy reviews when it was resolved.

Mr R didn't agree with the investigator;

- He wasn't happy the refund figures hadn't been provided sooner and this warranted some sort of sanction. I should order Phoenix to resolve matters.
- The system issues could be manually rectified. And if left to its own devices, there was little prospect of them resolved in the foreseeable future.
- Mr R wasn't in the position to make a further complaint. Phoenix had told him that it couldn't consider an additional complaint as it was 'currently with the FOS and therefore our investigation into the complaint has stopped.'
- The investigator expected Phoenix to keep Mr R updated about the system resolutions, but it hadn't volunteered an update in almost three years.
- The issues remained outstanding despite Phoenix' assurances they would be dealt with and were not outside of its control as suggested by the investigator.
- Redress should be in the region of £4,000 considering £2,000 was offered 18 months earlier and the same problems had persisted. The service received was the worst experienced by Mr R's professional advisers.
- If I don't make an award for professional fees, Mr R will be out of pocket.

As the complaint remains unresolved, it has been passed to me to decide in my role as ombudsman.

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.

After doing so, I have reached the same conclusion as the investigator and broadly for the same reasons. I'll explain why.

I'm aware I've set out the background to this complaint in far less detail than the parties and I've done so using my own words. The Financial Ombudsman Service was set up to be a quick and informal alternative to the courts. And the purpose of this decision is to explain what I think is fair and reasonable in the circumstances, not to offer a point-by-point response to everything the parties to the complaint have said. I have read all the submissions made but I will not refer to every submission, comment, or relevant consideration. I don't intend any discourtesy by this, but my decision sets out what I think are the most important points in order to explain my decision in a way that is intended to be clear and easy to understand.

I should also say I fully appreciate how frustrating and upsetting this must be for Mr R. He has spent more than two years trying to resolve the issues and obtain all the information he needs to ensure the redress so far paid is fair. And I understand from Phoenix the issue is still not resolved, despite its assurances that Mr R will be treated as a priority. That being said, I don't think Phoenix needs to do anything more than it has so far offered in trying to put the matter right.

The crux of this complaint relates to Phoenix increasing Mr 's monthly premiums in March 2022 and the subsequent service he received. It's clear those issues have been ongoing and exacerbated by incorrect updates and information being given to Mr R. The background to the complaint is well known to the parties so I won't go into too much detail about what has happened, and the focus of my decision will be the redress paid, the late payment interest and offer for the upset caused.

I can see that Phoenix has experienced continued system migration problems which meant that it automatically increased the premiums without notification to Mr R as it should have done, and the increase was incorrect. And it's clear Mr R and his representatives had to contact Phoenix on multiple occasions to try and resolve the problem. This must have been extremely frustrating, and no doubt was a cause for concern for Mr R. He just wanted correct notification about his policies and that he was covered by the policies as was intended. Phoenix has acknowledged the service it has provided has been poor.

Mr R's representative has referred to this service's website and that when an order is made by an ombudsman 'the business has to do what the ombudsman has told them to do.' It has asked what our scope is to make an order. However, my role isn't to fine or punish a business. And it isn't for this service to tell a firm how it should run its business. I can't instruct Phoenix to fix the issues. Its aware of the problem and it has said it is trying to get its system issues resolved and that Mr R's policy problems are to be resolved as a priority. And while I accept this is an unsatisfactory outcome for Mr R, I'm limited in what I can do for him in this regard. Mr R is aware he can complain further if he wishes to, but I appreciate this isn't the answer he wants.

However, I've gone onto consider the redress so far paid and Phoenix' calculations behind the payment. Phoenix provided this service with a spreadsheet and explanation to the calculations, and these have been passed onto Mr R. From the information presented to me, the redress paid and the calculation for the additional premium costs and the late payment interest looks correct and this hasn't been disputed by Mr R. I know Mr R isn't at all happy these haven't been provided before. It was one of his causes for complaint. Phoenix hasn't explained why this was the case and it seems clear to me that if this had been provided when Mr R initially asked, this would have helped him considerably. And in failing to provide

this information much sooner, I don't think Phoenix has provided the level of service I would expect. But Mr R is now in receipt of the information he requested.

Mr R would like the costs of his representatives – his financial adviser, personal assistant and solicitor – in making the complaint to be repaid to him. I understand from correspondence Phoenix will consider costs for the time his financial adviser has spent but no other costs. It has said Mr R had the option to refer his concerns to this service free of charge and this was explained in its complaint acknowledgement complaint procedures he was sent.

This service doesn't generally direct an award for the costs incurred in making a complaint. I appreciate Mr R is a busy person and his representative asked me to consider his age and situation and that the issues involved have caused him a lot of inconvenience and upset, but I haven't seen anything to persuade me that Mr R wasn't capable of making the complaint himself to both Phoenix and then this service. This service is free for a consumer in making a complaint and we try to be as flexible and supportive as we can in helping a consumer bringing the complaint.

Phoenix has offered £2,000 for the distress and inconvenience caused to Mr R. Mr R isn't happy with this and would like more. But the award being offered is more than I would recommend under similar circumstances. The issues resulting from Phoenix' system migration has caused sustained and continuing distress to Mr R. But I cannot see that Mr R has suffered any actual financial loss over and above the additional premiums taken from his bank account. However, these have been repaid along with 8% late payment interest which is the rate this service would recommend when a consumer has been out of pocket. But the offer of £2,000 is more than I would award and so I think it is fair and reasonable under the individual circumstances of this complaint.

It is now for Mr R to decide whether he wishes to accept it. And it's also for Mr R to decide whether to accept the late payment interest outstanding if he hasn't accepted so far.

As of 9 October 2024, Phoenix told us it didn't have any timescales for when its systems will be corrected but provided assurance that the relevant team has been asked to deal with Mr R's issues as a priority. As I've said above, I can't compel a business as to how it manages the service it provides its customers, that is the role of the regulator, the Financial Conduct Authority ('FCA'). But I would strongly urge Phoenix to resolve Mr R's outstanding issues – the correct policy reviews and associated policy documentation etc, – as soon as possible. The service he has received has been poor and I would expect it to put that right. It has said it would treat Mr R's case as a matter of priority, and it should do so. And I would expect it to keep Mr R fully and regularly updated as to the resolution of the outstanding issues.

Overall, I don't uphold Mr R's complaint about Phoenix Life Limited. I appreciate Mr R will be disappointed with the outcome, it's clear he feels strongly about it, and I can understand why. But I hope I have been able to explain how and why I have reached my decision.

My final decision

For the reasons given, I don't uphold the trustees of the R Trust, Mr C and Mr R's complaint about Phoenix Life Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mr R to accept or reject my decision before 20 March 2025.

Catherine Langley
Ombudsman