

## **The complaint**

Mrs P complains that Phoenix Life Limited (Phoenix) mis-sold her a reviewable whole of life (RWOL) policy, and about the way it was administered by reducing the policy's sum assured.

Her complaint is brought by her professional representative.

## **What happened**

In 1992 Phoenix advised Mrs P to take out a RWOL policy. Phoenix has since taken over both the adviser who sold this policy and the policy provider itself. Phoenix then is responsible for both the sale and administration of Mrs P's policy. For ease, any references to Phoenix below will include any actions by those earlier firms.

The policy was initially advised on the basis it would provide a sum assured of £55,813 for a monthly premium of £25. Those levels would be guaranteed for 10 years, after which it would be reviewed on a regular basis which could result in changes being required to the sum assured or the premium amount. It provided Mrs P with life and critical illness cover and for the first 10 years included a waiver of premium benefit.

In 2004, following such a review, Phoenix reduced the sum assured to £9,804.00 after it had written to Mrs P to explain either the premium or sum assured needed to change to sustain the policy. The default option was to reduce the sum assured and as no response was received, that reduction was applied.

When Mrs P later discussed her policy with her representatives she thought to complain about the way it was sold and the adjustment made to the sum assured. She felt this way because:

- She was sold a policy with limitless premium increases.
- She had no pension provision and so a plan running into retirement would be unaffordable.
- The fact-find completed during the advice noted she wanted to take no risk.
- She was of limited financial means having only £200 in her account at the time.
- She had similar cover already in place.

Phoenix considered her complaint but didn't think it should be upheld. It explained this was because:

- The initial sum assured was only guaranteed for 10 years, which had been made clear to her.
- Other types of cover were discussed during the advice.
- The policy was for protection and not intended to be a savings plan so her risk attitude wasn't a relevant factor.
- It didn't think the policy was unaffordable for her when she held it for 30 years at the same premium level.
- Mrs P hadn't complained at the time the sum assured was reduced in 2004.

Mrs P didn't agree with Phoenix's response and referred her complaint to our service. Across a number of our Investigator findings, her complaint wasn't upheld. A summary of those findings is:

- The advice was suitable because she had a need for family protection as it had been recommended for. As it wasn't recommended to be an investment her risk tolerance didn't cause the advice to be unsuitable.
- The adviser had discussed alternative products with her that could address her needs.
- The reviewable nature of the policy had been explained to her.
- Her existing cover didn't cause the advice to be unsuitable as there remained a need even with her other policies.
- There was no indication the policy was unaffordable for her.
- The policy only failed one review in 2004, the reasons and impacts of which had been sufficiently explained.

Mrs P's representatives responded disagreeing with those outcomes. In addition to restating earlier reasons, it argued some additional detail around the following:

- Her risk tolerance was relevant because she had been recommended a unit linked plan and there was a risk the plan could require changes if the underlying investment failed to perform.
- The plan itself and extent and impact of the reviewable nature wouldn't have been understood by Mrs P given she had no financial knowledge or experience.
- If the plan was affordable she would've increased the premium in 2004 to maintain the sum assured.
- There wasn't a need for family protection into retirement or when her children were no longer dependent on her.

Our Investigator wasn't persuaded to change their view and as there was no agreement the complaint 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.

#### Sale of the policy

When Phoenix advised Mrs P to take out her RWOL policy in June 1992 it needed to, based on the relevant rules at the time, ensure the recommendation it made was suitable for her having taken sufficient information from her to make that assessment. A fact-find was completed with her at the time which recorded the questions asked and the answers given. The pertinent information recorded within that was:

- She was married with two children, who were around 16 and 17 at the time.
- Her objectives were to provide protection for her family and had some interest in protecting her income.
- Jointly held a life assurance policy and an endowment.
- Had an interest only mortgage which had over 20 years remaining, intended to be repaid through an endowment.
- Was employed with an earned income of £8,000 and had typical monthly spending of £400 a month after her mortgage was paid.

- Assets including her property, valued at £40,000, and cash of £2,000.
- Had a 'very cautious' attitude to risk.
- A discussion had taken around alternative options, which included term assurance.

When thinking about the relevant rules at the time and the evidence that is available, given the passage of time not everything I'd usually want to see has been provided, I'm satisfied the advice given was suitable.

I say this because there is enough information that persuades me at the time Mrs P wanted to provide a sum of money for her family in the event of her passing or diagnosis of a critical illness. The financial impact of those on a household can be significant and the policy Mrs P was advised would help to mitigate that.

In reaching my decision I've thought about what existing cover Mrs P told Phoenix she had and whether that meant she already had those needs sufficiently met. From the evidence provided I think the endowment was likely the repayment vehicle for the mortgage given that was interest only, the repayment vehicle being said to be an endowment and the stated endowment value being around the expected level. In my view then that product was already being earmarked then to repay the mortgage and wouldn't then affect the suitability of the RWOL policy she was advised to take out.

Given the passage of time I don't have all the information about her existing life policy or the reason it was taken out. When thinking about this I've considered that it was common at the time to take out a life policy such as the one Mrs P already had alongside an interest-only mortgage. This was typically so that in the event of death while the mortgage is still outstanding the claim proceeds would aim to avoid that mortgage debt passing to the estate. Otherwise, that money can instead come from the estate and potentially mean their property would need to be sold to repay the mortgage, rather than pass it down to their descendants. There are indications here that this might have been the reason Mrs P took out that policy. I say this because of when it was taken out, it being on a joint basis and the amount assured under the policy appear to sufficiently match the circumstances of the mortgage. Regardless of whether that policy was bought to provide that type of cover, I'm satisfied there's enough evidence to persuade me it would've likely been useful for that purpose. As that would mean it was already in effect being utilised, I'm not persuaded this cover would cause her RWOL policy was suitable for her.

I also note that the RWOL policy would pay on her death alone and also provided critical illness cover, so provided both additional and different protection to what she already had. It would then be meeting her needs by providing financial protection to her family if she were to pass or be diagnosed with a critical illness by it paying out a lump sum should either of those happen. I've considered Mrs P's representative's arguments around this, but I'm not persuaded they make a difference. This is because even in retirement and her children no longer being dependant on her it's likely her need for family protection would remain given the policy would still be able to provide a legacy or mitigate the financial impact of her passing or critical illness on her family.

From the evidence provided, I've not seen the firm were told about the death in service cover Mrs P has since said she held at the time, so I can't fairly say it ought to have been aware of that. But on the other hand, it's unclear to what extent information about such policies had been requested from her. In any event even if I were to say the firm ought to have been reasonably aware of that cover, it wouldn't in my view render the advice unsuitable. I say this because the benefits of that policy aren't guaranteed and often cease when the related employment ends, whereas the RWOL wasn't dependent on such factors aiming instead to run for life and provided cover for both life and critical illness.

I've also not seen from the evidence available that this policy would likely have been unaffordable for Mrs P. The premium was £25 per month for a relatively high level of guaranteed cover for at least the first 10 years. I have seen some limited information about her income and expenditure from what she told the firm at the time. Given that shows she had around £200 disposable income each month and the premium would provide the cover it did for a relatively small amount of her disposable income, I'm satisfied it was likely affordable for her. While the premium could increase in the future, those levels would be unknown for at least 10 years. If it were to become unaffordable in the future then it would still have provided a relatively high level of cover for those 10 years for a monthly premium of £25. It would then in my view still be a fair recommendation at the time despite the potential for future increases.

Mrs P's representatives have said her 'very cautious' attitude to risk means this type of policy would be unsuitable for her as it exposed her to the risks of the stock market and of future premium increases. But I've not seen to agree where this policy was being advised to provide life and critical illness cover, not as an investment or a savings plan. The underlying investment wasn't to provide growth and income for Mrs P, it was to provide a pot to mitigate the higher cost of life premiums as she got older. While there was a risk the premium could increase in the future that in my view doesn't mean a RWOL policy wouldn't be suitable for her, and I'm satisfied the reviewable nature of this policy and how it worked was fairly explained to her in the policy documentation I've seen.

It follows then I'm satisfied, despite the reasons Mrs P feels otherwise, that the RWOL policy Phoenix advised was useful for her and likely suitable at the time given it met her needs and was affordable for her.

#### Administration of the policy

The terms of Mrs P's RWOL policy say that it is reviewable and at each review the firm will consider whether the policy can continue to maintain itself at the current sum assured and premium levels. If it can't, and so 'fails' the review, the firm will reduce the sum assured to an amount the premium can sustain. It also explains, as the 2004 failed review letter did, that Mrs P has the right to ask for a premium increase instead.

I'm satisfied then the policy didn't guarantee the premium or the sum assured for more than the 10 years Mrs P's policy illustration set out. Phoenix then would be able to review the policy and make changes to sustain it over the longer term.

But to apply that fairly, Phoenix would've needed to present that information to Mrs P, including sufficient warning around the potential changes the policy could need in the future, in a clear, fair and not misleading way. I say this because in meeting the regulator's requirements around this, firms needed to ensure that they provide policyholders with sufficient information for them to be able to make an informed decision about what changes to make on their policy, and how this might affect it in the future.

Applying this to Mrs P's circumstances, the first and only point I've seen Mrs P's life cover costs exceeded her premium, once the guaranteed initial cover of 10 years passed, was in 2004. Phoenix wrote to her at this time to explain it had reviewed her policy and it had failed the review, because it was no longer able to sustain itself on its current terms.

Having read that review letter, I don't think Phoenix provided Mrs P with all the information it ought to have. I say this because while it provided useful information about the changes it was suggesting, I've not seen it explained what the costs of the policy or the value of the investment pot were which would be key information in her being able to fully understand why the policy terms had to change, and to what extent future changes might be needed.

However, in my view even if Mrs P had all that information I don't think it's likely she would've made a different decision to maintain the premium for the reduced sum assured. The changes proposed to her to maintain her premium were significant, requiring her to increase her monthly premium either from £25 to £59.85, or £145.96, with those changes being expected to sustain the policy for either another 10 years or for life at those premium levels. From what Mrs P has said about her financial position I think it's unlikely she'd have wanted to pay those increases, particularly where the indications would be it could increase further in a similarly significant way in the future. I've also considered that Phoenix had made it clear what level of cover it could provide for £25 and what she'd need to pay for more, with Mrs P opting to leave the policy as it was. In my view then I think it's likely Mrs P only saw value in paying a monthly premium of £25 for her cover and wasn't looking to increase that. For those reasons then even with clearer information it's likely in my view she would've made the same decision.

I've thought about what her other options would've been. In doing so the evidence shows the investment part had no value left, as it was used to pay the life costs, and so encashing the policy wasn't an option. Leaving then either cancelling the policy or maintaining it on the amended terms. I think it's likely her initial need for the policy, which was for family protection, hadn't changed and would still be attractive and useful to her on the terms offered at the review where that was still likely a useful amount to meet her needs at a premium that was likely affordable for her. It follows then I think the most likely outcome would've been that she retained the policy on the reduced terms had she been provided with clearer information.

For the reasons given above while I acknowledge my decision will be disappointing for Mrs P, I won't be upholding her complaint as in my view it was suitable and fairly administered.

### **My final decision**

I don't uphold Mrs P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 20 October 2025.

Ken Roberts  
**Ombudsman**