DRN-5183609

The complaint

Mr K complained that Phoenix Life declined a claim on his life and critical illness policy.

What happened

Mr K held a life and critical illness policy with Phoenix Life which was due to end in November 2023. In October 2023, Mr K raised a claim after being diagnosed with a neurological condition. The condition wasn't a named condition on the policy and so the claim was considered under the total and permanent disability benefit. The claim was declined as the condition hadn't been deemed to be permanent at that time. Phoenix reviewed the claim again in May 2024. Again, it was declined. This was due to the policy having expired in November 2023.

Mr K was unhappy with the claim decision and so raised a complaint. Phoenix didn't uphold the complaint for the same reasons. Mr K was still unhappy and so brought the complaint to this service.

Our investigator didn't uphold the complaint. They didn't think it was unreasonable that Phoenix declined the claim, this was based on the comments of Phoenix's chief medical officer (CMO). Mr K appealed. He said he hadn't been told about the CMO or their opinion. Mr K felt the investigator had assessed the complaint on different grounds to the claim decline. As no agreement could be reached, the complaint has been passed to me to make a final decision.

I was minded to reach the same overall outcome as our investigator, but with some additional reasoning. So, I issued a provisional decision, to give both parties an opportunity to comment on my initial findings before I reached my final decision.

What I provisionally decided – and why

I previously issued a provisional decision on this complaint as my findings were different from that of our investigator. In my provisional decision, I said:

"*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

Based on what I've seen so far, I don't intend to uphold Mr K's complaint. I've explained my reasons why below.

When considering complaints such as this, I need to consider the relevant law, rules and industry guidelines. The relevant rules, set up by the Financial Conduct Authority, say that an insurer must deal with a claim promptly and fairly, and not unreasonably decline it. So, I've thought about whether Phoenix acted in line with these requirements when it declined to settle Mr K's claim.

At the outset I acknowledge that I've summarised his complaint in far less detail than Mr K has, and in my own words. I'm not going to respond to every single point made.

No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. The rules that govern the Financial Ombudsman Service allow me to do this as it's an informal dispute resolution service. If there's something I've not mentioned, it isn't because I've overlooked it. I haven't. I'm satisfied I don't need to comment on every individual point to be able to reach an outcome in line with my statutory remit.

To make a successful claim, Mr K needed to meet the definition in the policy terms and conditions before the policy expired. The policy sets out that Mr K is covered for 'Own occupation total permanent disability'. Then goes on to specify:

*"If own occupation total permanent disability benefit applies to only one **life assured**, on his first being diagnosed as disabled in accordance with provision 6.5 and surviving twenty-one days after."*

It further states:

*"**Own occupation total permanent disability***

*'Disabled' means that in the opinion of the Institution's chief medical officer, the **Life assured** (with the exception of housepersons and those not **in gainful employment** at the time the disability arises) is, due to disability arising before age 60, permanently unable to perform the material and substantial duties of his own occupation, as stated on the application form or as subsequently notified to and accepted by the Institution."*

I don't think it's in dispute, that at the time of the initial claim in October 2023, the above term hadn't been met. Mr K's argument is that based on his review in May 2024, his prognosis had changed which meant he did now meet the above term in October 2023 whilst the policy was still live.

In their response to Mr K's claim and complaint, Phoenix's response was simply that the policy had expired in November 2023 and so further claims couldn't be considered. I don't agree that this is the case. It's accepted that Mr K had suffered from a serious condition when the policy was in place. It was initially thought that Mr K would make a full recovery and be able to return to work. However, this doesn't mean that he would. In this case, Mr K's prognosis was changed in May 2024. At this time, Mr K's consultant stated, "Given the lack of progress, I therefore no longer think it is likely he will ever recover to the point he can resume his previous employment".

However, during Phoenix's review of the claim, Mr K's medical history was reviewed by their CMO neurologist. They provided the following opinion:

"The diagnosis of a serious and significant [body part] disorder in Autumn of 2023 is not in doubt. He also had some imaging abnormalities, so some death of [body part] tissue is probable.

There is, however a disconnect between the letters on discharge, the early follow up letters (eg March 24) and the psychology assessment/recommendation of April, all which talk about return to work [RTW] graded etc. Then there is the more recent letter from [Consultant] who is now expressing the opinion that he cannot RTW and that some (unspecified which) deficits will be permanent.

From this distance it is hard to say which is likely to be the case .i.e a gradual return to normal or near normal functioning or some form of permanent deficit.

I do not understand what can have become so clear clinically in 1-2 months that changes

opinion from March/April of graded RTW to the letter of May 24 that states RTW is untenable.

It sounds like he has a high intellectual demand job so the bar to RTW is high so it might not need many deficits to limit his RTW, but there is insufficient here to be decisive."

Based on the above, Phoenix did consider whether the new prognosis in May 2024 supported the policy definition being met. The CMO didn't agree there was medical evidence to support the consultant's opinion and as a result, the claim couldn't be accepted.

The policy term needs the CMO's opinion that the consumer is permanently unable to return to work. In this case, the CMO doesn't have this opinion. I appreciate Mr K doesn't agree it's fair for a CMO to reach a different opinion to his consultant. However, this is what the policy terms and conditions require.

Whilst I don't agree Phoenix can solely rely on the policy having now expired to decline the claim, having reviewed the policy terms, the medical evidence, and the CMO's opinion, I don't think Phoenix has acted unfairly or unreasonably in declining the claim at this point in time.

I would expect Phoenix to review the claim further if additional information is provided to them by Mr K."

Therefore, I wasn't minded to direct Phoenix Life to do anything further as I didn't think they'd done anything wrong.

Responses to my provisional decision

Neither Mr K nor Phoenix Life responded to the provisional decision by the deadline.

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've thought carefully about the provisional decision I reached. Having done so, and as neither party has provided anything which could lead me to depart from my provisional decision, my final decision remains the same as my provisional decision, and for the same reasons.

My final decision

For the reasons I've given above, my final decision is that I don't uphold this complaint. I don't require Phoenix Life Limited to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 25 March 2025.

Anthony Mullins
Ombudsman