

The complaint

This complaint has been brought by the trustee and executors acting on behalf of the estate of the late Mrs K.

They complain that Phoenix Life Limited (Phoenix) acted unfairly when it didn't pay a claim it made on the whole of life policy held by the late Mrs K.

The trustee and executors are represented in this complaint by Mr H.

What happened

The background to this complaint is well known to all parties so I'll just give a broad overview here.

In 1986, Mrs K took out a whole of life assurance policy jointly with her husband, via an Independent Financial Advisor (IFA), with a company that was later taken over by Phoenix.

The policy was single premium whereby the policyholders made an initial premium payment in return for a sum assured payment on the event of the death of the second policyholder, i.e. once both policyholders had died. The single premium was placed into an investment fund which was designed to sustain the sum assured premiums due.

The sum assured was guaranteed for an initial period of ten years before it was reviewed. This review was intended to consider the value of the fund and decide if it was sufficient to continue to support the original sum assured. If it was decided it wasn't then the policy holder would have the option of either making an additional premium contribution – or – to make no additional payment but reduce the sum assured. Following this initial ten-year review, further reviews would take place every five years.

As part of this regular review process, Phoenix wrote to Mr and Mrs K in May 2003. It said the sum assured would be guaranteed until the next anniversary of the policy on 1 February 2004. But it also said that on current assumptions the existing sum assured level was likely, but not guaranteed, to be maintained over future years. And a further premium payment would be most likely needed in the future. Phoenix suggested an additional premium payment and asked Mr and Mrs K to let it know what they would like to do. It also said that it would undertake annual reviews going forward.

Phoenix didn't receive a response from Mr and Mrs K as the review correspondence was returned to it with the notation "gone away".

Phoenix had also copied in the IFA who sold the original policy to Mr and Mrs K, but it told Phoenix that it no longer acted for them, and it shouldn't be sent any related correspondence going forward.

Phoenix continued to undertake the reviews, each time sending Mr and Mrs K the outcome which warned that the policy would need either a reduction in the sum assured, a further

premium payment to maintain the current level, or, if neither option was taken, the policy would eventually lapse with no benefits payable.

Each time, the review correspondence was sent to the address Phoenix had always held for Mr and Mrs K and, each time, the correspondence was returned as “gone away”.

In 2012, Phoenix wrote to Mr and Mrs K at the address it held, explaining the policy had lapsed as the funds to support the sum assured had been exhausted.

Mr K sadly passed away in 2003 and Mrs K sadly passed away in 2023.

Following Mrs K’s death, her executors made a claim on the policy.

Phoenix didn’t accept the claim and explained to the executors the policy had lapsed in 2009 as the investment funds used to fund the sum assured had exhausted and it hadn’t received any response from Mr and Mrs K to the review letters it had sent them.

In response to this, Mr H complained to Phoenix on behalf of the trustee and executors.

He said the policy illustration given to Mr and Mrs K, at the time of the sale, stated the sum assured was guaranteed and there was no suggestion it was subject to change and might not be paid upon the death of the second policyholder.

Mr H also told Phoenix that Mr and Mrs K had moved from the address it had used to correspond with them in 2000 – and he’d seen notes made by Mrs K to show she’d contacted Phoenix after she’d moved.

Mr H also thought Phoenix should have pro-actively attempted to contact Mr and Mrs K when its correspondence had been returned as “gone away”. This would have ensured Mrs K was aware of the policy reviews and able to decide what to do to protect the original sum assured.

Phoenix didn’t uphold the complaint. It said the full terms and conditions of the policy were made available to Mr and Mrs K when they originally took it out. Phoenix went on to say it had undertaken all the necessary reviews and had written to Mr and Mrs K to make them aware of the policy status and what action they would need to take to maintain the sum assured and to avoid the policy lapsing.

Phoenix also said it was the responsibility of the policyholders to keep it informed of their current address.

Mr H wasn’t happy with this response so brought the complaint to this Service.

Our Investigator reviewed the evidence and didn’t think Phoenix had done anything wrong.

She said Phoenix were within its rights to lapse the policy as the funds used to support the sum assured had exhausted. She also thought the terms and conditions were clear that the sum assured wasn’t guaranteed and subject to reviews. And she didn’t think there was sufficient evidence to show Mrs K had contacted Phoenix which would have allowed her address to be changed and be made aware of the policy review implications.

Mr H wasn’t satisfied with this opinion, so the complaint has been passed to me for a final 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've first considered if Phoenix did anything wrong by lapsing the policy and from the evidence I've seen I don't think it did.

Mr and Mrs K's policy used an initial lump sum premium which was placed under investment management and converted into units. Each month units were deducted from this fund to make the premium payments needed to support the agreed sum assured. The value of this investment fund could rise or fall depending on the investment performance and so reviews were undertaken periodically to ensure that, based on particular assumptions, the investment would be able to fund the sum assured premiums in future. If it was deemed, using the assumptions, that there was a danger the fund would be exhausted, then the policy holders would be notified and told what corrective action it could take. If no changes were made by the policy holders, and the investment funds became too low to support the premium payments required then, eventually, there would be none left and, as premium payments to support the sum assured were no longer able to be made, the policy would lapse.

In this complaint, Phoenix undertook reviews and explained to Mr and Mrs K that the investment fund level was diminishing and unless corrective action was taken would eventually become exhausted. And if that happened the policy would lapse with no benefits paid. As Phoenix didn't receive any response to its reviews and suggested corrective action, no changes were made and the investment fund eventually exhausted in 2009, and the policy lapsed.

Section 3 (3) of the terms and conditions of the policy clearly explains this review process and the implications to the policy if the fund value were to exhaust. As the actions taken by Phoenix were as instructed within these terms and conditions, I don't think I can reasonably say it did anything wrong by maintaining the original sum assured and exhausting the investment fund which led to the policy lapsing.

Mr H thinks for the fund to have been exhausted the investment is likely to have been poorly managed. I make no comment on the investment performance, but I will say it's usual in these types of policies that the premiums needed to support the original sum assured increase over time, because of changes to the underlying risks. And I'm minded that the policy supported the original sum assured, with only the initial premium payment, for a period of twenty-three years which I think is reasonable.

I've also thought about Mr H's concerns that the documentation Mr and Mrs K were given when they originally took out the policy expressly said the sum assured would be guaranteed. Mr H thinks this was mis-leading.

I've looked carefully at the evidence available and in particular the Policy Illustration that was prepared for Mr and Mrs K in December 1985.

This document does say:

"On the second death the Company will make a guaranteed cash payment of(the original sum assured)"

and so, I can understand why Mr H feels this would have been mis-leading.

But I'm also minded that on the same page it states:

"This illustration should be read in conjunction with the (...policy booklet) which explains the contract in detail".

It's not clear from the evidence if Mr and Mrs K read the policy booklet but if they did, as advised, they would have seen that while the sum assured was guaranteed for the first ten years of the policy, it was, thereafter, subject to the periodic reviews mentioned above.

So, on the evidence I've seen, I think Mr and Mrs K were provided with the information they needed to understand that the sum assured wasn't guaranteed for the entirety of the policy before they proceeded with the sale.

The final part of this complaint I've considered is whether Phoenix should have done more to ensure Mr and Mrs K received the review correspondence after they moved home in 2000.

It's clear from the evidence that Mr and Mrs K weren't receiving the review correspondence as it was returned to Phoenix with the notation "gone away" recorded. And, given the reviews were returned over a period of several years, I can understand why Mr H feels it would have been evident to Phoenix that Mr and Mrs K were not receiving the reviews.

I've seen no evidence that Mr and Mrs K contacted Phoenix, when a change of address could have been registered, before the policy lapsed in 2009. But I've seen the notes that Mr H says Mrs K made to indicate she'd contacted Phoenix after this. There are two dates noted, the first December 2012 and the second May 2018. And the note also contains Phoenix Life contact details, so I can understand why Mr H feels it is likely that Mrs K contacted Phoenix. But Phoenix have said it has no record of any contact with Mrs K.

Mr H thinks these notes would only have been made because of Mrs K's contact with Phoenix – he says there isn't any plausible alternative. But the detail on the note is simply contact information and not, for example, a note of what might have been discussed. The notes indicate dates, phone numbers and addresses where contact might have been made, but I don't think that this evidence, on its own, coupled with Phoenix having no record of any contact, is sufficient for me to conclude that contact had been made.

I'm also minded that, if contact *had* been made in 2012 or in 2018, Mrs K would have been made aware the policy had lapsed in 2009 and so presumably would have had cause for complaint at that time should she have wished. But I've seen no evidence that Mrs K made a note of the policy lapsing or any indication that she was aware and might wish to complain. So, having considered the evidence carefully I don't think I can reasonably conclude Mrs K contacted Phoenix or, at any time, made it aware of her new address.

Mr H thinks Phoenix should have proactively investigated Mr and Mrs K's new address when it became clear the one it held for them was no longer valid. I can appreciate that this would have been helpful, but this is something that Phoenix simply wasn't obliged to do.

Mr and Mrs K, as policyholders, had a responsibility to ensure Phoenix held their correct address and I've seen no evidence to suggest they did, or tried to, before the policy lapsed in 2009. So, as I don't think Phoenix were obliged to undertake an investigation to ascertain Mrs K's new address, I can't reasonably say that it did anything wrong by not doing so.

In summary, I think Phoenix acted in line with the terms and conditions of the policy and weren't obliged to undertake an investigation to discover Mrs K's correct address when it received returned correspondence.

From the evidence I've seen, I don't think I can reasonably conclude that Mrs K informed Phoenix of her new address and as Phoenix didn't receive any instruction to make further premium payments, or amend the sum assured, it was within its rights to allow the investment funds to exhaust and the policy to lapse.

The family of Mr and Mrs K do have my condolences, and I can appreciate this will have been a difficult time for them but, as I don't think Phoenix did anything wrong in this complaint, I won't be asking it to do anything more.

My final decision

For the reasons stated above I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and the estate of Mrs K to accept or reject my decision before 27 November 2025.

Ben Castell
Ombudsman