

The complaint

Miss H's complaint is about the sale of an endowment policy in 1991. She believes the endowment policy was mis-sold to her as:

- she did not need the life cover included in the policy;
- she was not financially literate;
- the risk associated with the investment fund was too high; and
- it is unclear why she was recommended a policy with a term of 23 years.

Although it was not the original product provider, Phoenix Life CA Limited is now responsible for the advice Miss H received.

Miss H is represented in her complaint, but for ease, I will refer to all communications and comments as hers. She has also complained about the sale of two mortgage endowment policies she was sold by the same life assurance company in 1989.

What happened

Miss H's policy started in August 1991. It was a unit-linked endowment policy which provided life cover of £3,647, had a premium of £10 per month and a term of 23 years. The policy was invested in the UK Equity fund.

The fact find from the time of the sale detailed that Miss H was aged 29 and single with no dependents. She was employed as a dental nurse with an income of £8,500, including a secondary monthly income of £60. It was confirmed that Miss H was renting her home. She had a total of £300 in deposit-based funds, of which £100 was in her current account and the remainder in a savings account. Miss H was also recorded as having an existing policy with what appears to be the same life assurance company, to which she paid £40 per month. No sum assured was detailed for the policy, but as it had started in 1987, it would appear to be the same policy as was detailed on the fact find in 1989 as providing life cover of £14,000. Miss H also had two mortgage endowment policies the same adviser had sold her in 1989, which had approximately 23 years of their terms remaining.

The financial adviser completed a protection needs assessment and determined that, in order to replace Miss H's income in the event of her death, she needed an additional £50,000 of life cover. Miss H's requirements were detailed as 1. Regular savings and 2. Protection. While protection was documented, as Miss H's second requirement, it was not ticked, as savings and all the other boxes were. In relation to 'Investment Preference' Miss H ticked both 'Realistic' and 'Speculative', with the only other option being 'Conservative'. Miss H was asked if she wanted a fixed maturity date or a flexible open-ended product – she chose the latter.

Three application forms were completed on 23 July 1991, 25 July 1991 and 16 August 1991. They all detailed that Miss H wanted a top-up policy over a term of 23 years to match the 1989 policies, with a sum assured of £3,647. The first two applications detailed that the premium was to include an automatic increase option. The fund selected was detailed as UK, which was interpreted as the UK Equity fund.

The first application was rejected and returned to the financial adviser as the wrong application form had been completed. The second application was rejected as the option to 'auto increase' the premiums was selected, which the life assurance company said was not available – only level or low-start premiums. The third application was for a level premium policy and Miss H signed a memo to confirm that.

The policy was surrendered in June 2014 for £1,424.17.

Miss H complained about the sale in 2024. Phoenix responded to the complaint in a letter of 31 December 2024. It set out the details of the policy and said that it considered it was suitable for the long-term savings Miss H had wanted in 1991.

Miss H was not satisfied with the response and referred her complaint to this Service. Phoenix confirmed to this service that there was no evidence to suggest the plan was taken out as a mortgage repayment vehicle, but rather it was taken out for long-term savings.

One of our Investigators considered the complaint, but she didn't recommend that it be upheld. Miss H didn't accept the Investigator's conclusions and asked that the complaint be passed to an Ombudsman for review.

I issued a provisional decision on 10 June 2025, in which I set out my conclusions and reasons for reaching them. Below is an excerpt.

'Phoenix has said that it reviewed the sale of this policy and those sold to Miss H on the basis of them being savings plans as they were never attached to a mortgage. It does appear to be correct that the policies were not attached to a mortgage, but I don't agree that was a reasonable approach.'

The policy subject to this complaint was sold as a top-up to the 1989 policies. The fact find from 1989 only detailed Miss H's future plans as wanting to purchase a property in two to three years. No other priorities or requirements were documented. Added to this, the policies sold to Miss H were specifically designed to support an interest-only mortgage. As such, I concluded that the policies had been sold for use with a future mortgage, known in the investment industry as "forward sales". Given this policy was sold as a top-up to the existing ones, that would indicate this policy was also being sold for future mortgage purposes.

That practice has been considered unsuitable throughout the industry for many years as it could not be known whether such a policy would ever be used for the purpose it was sold for, and if it was, whether it would be suitable for the customer at that time. The existence of such a policy could lead to a consumer entering into a mortgage arrangement that was unsuitable for them, simply because they already had a mortgage endowment policy in place.

The fact find in this case says that Miss H wanted regular savings and that she wanted those savings arrangements to be open-ended. However, the policy sold to her was not open-ended and had a fixed term.

I also have concerns about the second requirement that has been documented on the fact find. All of the other responses to the questions in this section of the form are ticked, but that for protection is not. It brings into question whether protection was actually one of Miss H's requirements. In addition, given that she was young, single and had no dependents, the financial adviser would know that her priority for protection would be living benefits, such as critical illness or total and permanent disability cover, rather than death benefits.

Overall, I am persuaded by the evidence that this policy was sold for the same purpose as the previous ones – to be used as protection and the repayment vehicle for a future mortgage. As such, I am satisfied that it was mis-sold.

When considering redress we aim to place a consumer in as close as possible to the same financial position as they would have been in, had the error or mistake made by the financial business not been made. In this case, I consider that this policy should not have been sold to Miss H.'

Miss H accepted my provisional decision. Phoenix acknowledged receiving it, but it didn't make any comment on my conclusions.

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 have reviewed the file again in its entirety and I have revisited my provisional decision. Having done so, in the absence of any new evidence or arguments, I remain of the opinion that this complaint should be upheld for the reasons set out in my provisional decision.

Putting things right

I require Phoenix to calculate redress as A minus B, plus C where:

- A. A refund of premiums paid to the policy to the date of surrender plus interest* from the date of payment to the surrender date.
- B. The surrender value as at 18 June 2014.
- C. Interest* on the resultant sum from 18 June 2014 to the date of settlement.

*Interest is at a rate of 15% simple per annum until 1 April 1993 and 8% simple per annum thereafter. If Phoenix Life CA Limited considers that it's required by HM Revenue & Customs to deduct income tax from any interest due to Miss H, it should tell her how much it's taken off. It should also give Miss H a certificate showing this if she asks for one, for use with HM Revenue & Customs if appropriate.

I note from the information Phoenix has provided about these policies that Miss H had periods in 1992/1993 and 1995/96 where she paid the premiums late. The dates of the actual payments, where known, should be used in the above calculation.

My final decision

My final decision is that I uphold this complaint. I require Phoenix Life CA Limited to settle the complaint by paying redress calculated as detailed above in 'putting things right'.

Under the rules of the Financial Ombudsman Service, I am required to ask Miss H to accept or reject my decision before 28 July 2025.

Derry Baxter
Ombudsman