

The complaint

Mr L's complained that Phoenix Life Limited have declined to consider a claim for total permanent disability under his critical illness policy.

Mr L's been represented in his complaint by Mrs L. Comments and submissions attributed in this decision to Mr L include those made by Mrs L on his behalf.

What happened

In 2003, Mr L had the opportunity to buy a life and critical illness policy from a company I'll call S. The opportunity was provided to employees of Mrs L's employer and their spouses. When Mrs L left her employer the following year, she and Mr L were able to continue the policy for a revised premium.

In 2005, Phoenix wrote to Mr L, explaining that S had decided to withdraw from the UK market and cover would be transferring to them. The letter enclosed a revised policy schedule and a booklet detailing the conditions they covered. And they included details of how to cancel if Mr L didn't want to continue with the policy. Mr L chose to continue.

In the intervening years, Mr L has sadly been diagnosed with several conditions, which prevent him from working and impact on his ability to live independently. So, in 2024, he contacted Phoenix to make a critical illness claim on the basis of total permanent disability (TPD). Phoenix declined the claim, because they said Mr L's policy didn't include TPD.

Mr L complained. He said the policy he'd bought from S in 2003 had included cover for TPD and he'd been told the policy had been continued on the same terms. Phoenix didn't change their decision. So Mr L brought his complaint to the Financial Ombudsman Service.

Our investigator reviewed the information provided by both parties and concluded Phoenix didn't need to do anything different to resolve Mr L's complaint. Mr L didn't agree with our investigator's view. So the complaint's been passed to me to make 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.

Having done that, I'm not upholding Mr L's complaint. I know he'll be disappointed at the outcome and I'm sorry about that. I hope it will help if I explain the reasons for my decision. I'll do so, focusing on the points and evidence I consider material to my decision. So if I don't mention something in particular, it's not because I haven't thought about it. Rather, it doesn't change the outcome of the complaint.

I was sorry to read about Mr L's current health. I completely understand why he wants to make a claim. But I can only direct Phoenix to do something differently if I'm satisfied they've not dealt with his claim fairly.

The starting point for considering this are the policy terms and conditions. This is usually straightforward. But, in this instance, the crux of the complaint is which terms are applicable. Mr L says I should consider the original terms offered by S. Phoenix say later terms, which don't cover TPD, apply.

I've thought very carefully about this. But it's clear from documentation Mr L sent us that S's policy terms ceased to apply in 2005, when S withdrew from the UK market. I've seen a letter from Phoenix dated July 2005 which says:

"In line with the S Group strategy to withdraw from the UK market, current in force employee benefits policies are being terminated in accordance with the terms of their contract.

We appreciate that you have taken a continuation option on your policy and since this contract is deemed as long term you will be pleased to learn that this policy is not terminating but will in fact be transferring to our individual business department with immediate effect.

Please find enclosed the following documentation for your retention:

- *Revised Policy Schedule (please note new policy number)*
- *Booklet detailing conditions covered*
- *Notice of Cancellation*

Obviously you have the right to change your mind should you not wish to proceed with this policy. Please find enclosed a document which explains that you have 30 days to withdraw from the contract and a notice of cancellation that must be signed and returned to the address on this letter."

The booklet lists which conditions were covered. TPD isn't on the list. So it's clear it's not covered.

Mr L says he was told the cover wasn't changing. I don't think that's the case. I think it's clear from this letter that Phoenix wasn't simply adopting S's policy, but was providing cover on its own terms. And it recognises that some customers might prefer to cancel than accept what was offered.

Phoenix provided documentation to help Mr L make that decision. I can't reasonably say, as he has suggested, that there was no reason for him to compare the terms. Nor that, because he wasn't directed to compare the policies, S's original terms should apply.

Mr L's submitted that Phoenix haven't complied with their Consumer Duty obligations in how they dealt with this. I've thought about this. But I'm not satisfied that's a relevant consideration here.

The Consumer Duty principle was added to the FCA Handbook on 31 July 2023. It applied to open products (ie, those still available to be bought by consumers) from that date. But it only applied to closed products – like this one – from 31 July 2024. And it doesn't apply retrospectively, only to events which happened on or after this date.

Mr L's claim was declined on 31 July 2024. So the Consumer Duty applies to that decline decision. I'm satisfied the claim was declined in line with the policy terms – so I don't think the Consumer Duty was breached. And the policy was transferred before this date – so I can't say the duty applies to information provided at that time.

Mr L has recently told us that the letter received didn't include the enclosures listed in the extract I've quoted above. That's a new complaint which Phoenix don't appear to have had

the chance to address. So Mr L would need to raise that with them if he wants to take that aspect any further. But I don't think Phoenix need to do any more to resolve this complaint.

My final decision

For the reasons I've explained, I'm not upholding Mr L's complaint about Phoenix Life Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 7 November 2025.

Helen Stacey
Ombudsman