

## **The complaint**

The estate of Mr B complains about Phoenix Life CA Limited's administration of the late Mr B's reviewable whole of life policy.

## **What happened**

The late Mr B took out the policy in March 1990, initially for a sum assured of £45,455 and a monthly premium of £15.01.

The policy was regularly reviewed and from 2005 to 2020, the reviews were carried out every year. These reviews told the late Mr B that no changes needed to be made to the policy. In 2021, the policy failed a review. Mr B needed reduce the sum assured to £14,989 or increase the premium to £64.27. Given the increase required in the premium, the late Mr B accepted a reduction in the sum assured but raised a complaint.

Phoenix Life didn't think it had done anything wrong, so the complaint was referred to this service and passed to one of our investigators. During our consideration of the complaint, Mr B sadly passed away. Phoenix Life paid out £15,235.08 (including interest) to the estate of Mr B. The estate of Mr B continued the complaint.

Our investigator looked into the estate of Mr B's complaint and thought it should be upheld. In summary, she didn't think Phoenix Life had provided the late Mr B with fair, clear and not misleading information over the relevant time period, and he had therefore been deprived of the opportunity to make changes to the policy at times when those changes were possible. She concluded that at the point when the premiums were no longer enough to meet the costs of the policy on their own, the firm should've sent more comprehensive communications and provided more information about how the policy was performing. Weighing up all the evidence, she thought that armed with this information, the late Mr B would've made changes to the policy in 2009 to make it more sustainable. She therefore asked Phoenix Life to reconstruct the policy.

Phoenix Life carried out the calculation and found that the estate was owed an extra £719, plus interest.

Mrs B, representing the estate, didn't think this was fair, so she asked an ombudsman to review the matter. In summary, she said that the plan reviews had given her and her late husband a false sense of security that the policy was working as intended, when in reality that wasn't the case. She said that Phoenix Life should be held responsible for its failure in communicating properly and denying them the opportunity to make informed decisions.

Mrs B also said that it wasn't for the investigator to decide what they might have paid in 2009 – she didn't feel it was fair that the investigator concluded that they wouldn't have paid £95 per month.

Overall she thought that Phoenix Life wasn't being held accountable for its failure in

communicating properly with them and for depriving them of key information about the policy.

As an agreement couldn't be reached, the case 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.

I'd like to firstly extend my condolences to Mrs B. I understand that it has been an extraordinarily difficult time for her over the last few years.

In reviewing this complaint, I note that the substance of the investigator's findings appears to be accepted, so I won't comment on the reviews or the communications issued by Phoenix Life, unless they are relevant to the issue of compensation which is the only issue currently in dispute.

I've considered Mrs B's comments in relation to the remedy proposed by the investigator. I want to take this opportunity to explain how I approach the issue of compensation and why I think what the investigator awarded is fair – even though I accept it isn't what Mrs B was expecting.

When I identify that a business has made an error or has not done something it should've done, my role isn't to punish the firm. I do not have regulatory powers. My role is to consider what would've happened if the business had not made the error or had taken the action which I think it should've taken. I therefore need to consider what the consumer's position would be – and I need to take into account all the evidence I have when reaching my decision.

In Mrs B's case, I agree with the investigator that Phoenix Life ought to have been issuing review letters with more information and setting out the options in a much clearer and comprehensive way. So Mrs B and the late Mr B ought to have known over time how their policy was performing and the likelihood that premiums would become more expensive. This means that the reviews after 2008 should've contained this information in a clear way.

But this doesn't automatically mean that Mrs B and the late Mr B would've made changes to the policy. In their complaint to this service, Mrs B and the late Mr B explained they would've made more changes "when required" – but the relevant standards, which the investigator set out in her assessment, didn't mean that Phoenix Life had to require specific changes to the policy. What they required was for Phoenix Life to provide more information – but it was ultimately down to Mrs B and the late Mr B to make changes.

And whilst I have huge sympathy for the difficult time Mrs B has experienced, I need to remain impartial and consider what is fair and reasonable in the circumstances. This means weighing up all the evidence available in to order to decide, on the balance of probabilities, whether Phoenix Life's actions or inactions caused Mrs B and the late Mr B any financial detriment that needs to be put right.

So I've firstly considered the information which Phoenix Life *did* give Mrs B and the late Mr B.

As the investigator explained, the 2009 review was a significant moment in the life cycle of the policy. At this point it was apparent to Phoenix Life that the premiums were no longer enough to meet the cost of cover on their own and therefore the moment had come when

the policy would be increasingly reliant on the performance of the underlying fund.

I won't repeat all the information that should've been included – instead I'll focus on what the letter did say. It explained that the review was only looking to whether the benefits could be sustained until the next review date (which was the following year) and that it made certain assumptions when deciding how long the life cover could be maintained for. Crucially, it told Mrs B and the late Mr B that even if the underlying fund grew by 8% per year, the plan would only support the benefits for another 10 years. The letter said:

“If the projected figures above show that your plan is unlikely to support the current benefits for as long as you need them, then, unless you take action, it is likely that your plan will fail a future plan review. If this happens you can choose to increase your premium to maintain the level of benefits or accept a reduction in the benefits. You should be aware that, as you will be older when this happens, the cost of obtaining replacement benefits could be relatively high.”

The letter went on to explain that Mrs B and the late Mr B “could increase [their] premium now to support [their] benefits for the whole of [their] life” – although Phoenix Life couldn't guarantee that future changes wouldn't be necessary.

So whilst I fully agree with the investigator's conclusion that this wasn't enough information (given that it contained no monetary figures for the plan's costs and charges and therefore no ability for Mrs B and the late Mr B to understand how much their policy was costing and how those costs were increasing), I also think it's important to take into account what those letters did in fact say when deciding what they would've done differently. I say this because these statements do highlight the fact that the policy will not, in fact, last their whole lives – and subsequent letters also say the same thing, but with the projections getting shorter and shorter. For example when the policy was reviewed in 2018, the projections showed that the policy would last at most another 3 years – so at that point Mrs B and the late Mr B did have some indication that changes would soon be required, even if they couldn't imagine how significant those changes would eventually be.

In 2009, armed with more information, Mrs B and the late Mr B would've had a number of options. They could've decided to surrender the policy – but that seems unlikely as the purpose of the policy was to provide a payout on death and that need hadn't changed. They could've chosen to do nothing – I think this is possible, because although they would've had a better idea about future possible changes to the policy, they also would've known that they didn't *need* to do anything. Phoenix would've been able to show them that the policy was still likely going to be sustainable and changes wouldn't be needed for a number of years.

Or they could've made some changes to the policy – such as increasing their premium or decreasing the sum assured.

One option, which is also highlighted in the 2009 review letter, was for the late Mr B and Mrs B to obtain a quote to provide the life cover for life. Phoenix Life has told the investigator that this would've meant increasing the premium, at the time, to around £95 per month – although it couldn't be certain as to what quotes would've been provided, as the predecessor firm had stopped offering these policies after 2001.

The investigator didn't consider it likely that the late Mr B and Mrs B would've paid so much more towards their policy, so she recommended that the policy be reconstructed using the quote for a whole of life policy reviewed on a standard basis at inception – i.e. when the policy was taken out. This amounted to around £27 per month for around £45,000 worth of cover.

Phoenix Life accepted this – but said that a policy written on these terms would've failed a review after 2009, and the sum assured would've dropped to £15,708. This was higher than the sum assured on the policy when Mr B passed away (£14,989) and so it offered to pay her the difference, including interest, which amounted to £798.50.

I understand Mrs B was shocked by the offer because she says they would've taken steps to increase the premium over time in order to maintain the sum assured at £45,000. But my role is to look at the matter impartially, weighing up all the evidence available to me. I'm not persuaded Mrs B and the late Mr B would've volunteered to increase their monthly premium to around £95 per month in 2009, considering they complained in 2021 when the premium *needed* to increase to over £60.

It's important to emphasise here that Phoenix Life wouldn't have required them to make any changes in 2009 – it needed to give Mrs B and the late Mr B more information about their policy, but it didn't need to force them into increasing their premium or reducing the sum assured. So whatever changes Mrs B and the late Mr B would've made, they would've been made of their own initiative.

Taking all this into account, I'm therefore persuaded that the offer put forward by Phoenix Life is a fair one and I'm not going to ask it to do anything further.

### **Putting things right**

I understand Phoenix Life's calculations mean that Mrs B would've received £719 extra on claim had the policy terms been changed in 2009. It needs to add 8% interest to that amount until the date we tell it Mrs B has accepted this final decision.

### **My final decision**

My final decision is that I uphold Mrs B's complaint, but I'm not awarding more compensation than what the investigator initially recommended.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr B to accept or reject my decision before 8 March 2026.

Alessandro Pulzone  
**Ombudsman**