DRN-5945437

The complaint

The trustees complain about a reviewable whole of life policy held with Phoenix Life Limited ("Phoenix"). Their complaint, essentially, is about the reduction in the sum assured associated with the policy. The trustees are unhappy with the reduction. They think Phoenix has not done enough to keep them updated about the policy, and that the reductions made to the sum assured are arbitrary.

What happened

A whole of life policy was taken out with Phoenix in the 1980s by Mr and Mrs R. It was written in trust, and the complaint has been brought by the current trustees of the trust; Mr and Mrs R's children. The policy was reviewable, with the first review after ten years and reviews every five years thereafter, until both policyholders reached age 75, at which point the reviews took place every three years.

It appears (I have not seen the original policy application) that the policy was set up to have its sum assured increased each year (this is usually described as "indexing", meaning the sum assured (and premiums) rise each year in line with an inflation measure). The policy was set up on a joint life, second death basis. Mr R sadly died in 2018, meaning there is now one life assured; Mrs R.

It appears that in 2007 a reduction in the sum assured was discussed with an advisor. Phoenix has provided a copy of a quote for a reduction to £200,000 cover sent to an advisor at this time. However, it seems the policyholders did not proceed with the reduction, as the sum assured was not reduced.

By 1999 the policy was being reviewed every five years. And, by 2014, reviews began to take place every three years (although, as noted below, the first of these reviews was carried out late).

In 2009 the policy passed the review i.e. no increase to the premium or decrease to the sum assured was required, to sustain the policy to the next review. At this time, the premium was £239.96, and the sum assured £514,211. The 2009 review letter included the following:

"*We regularly review your policy to check whether the premiums you are paying are sufficient to provide the protection benefits you chose when you bought the policy.*

At the moment you're paying £239.96 monthly for protection benefits. The benefit is currently £514211. For full details of your cover please refer to the full terms and conditions of your policy.

When you originally took out your policy you may have opted to automatically increase the level of your guaranteed death benefit each year. If you have an automatic annual increase in cover, any new policies set up automatically have also been included in the review.

Following a review of your policy, we're pleased to confirm that your premiums are sufficient to pay for your policy's current level of protection benefits until the next

scheduled review date of 16 August 2014. No change is therefore needed to your premiums or protection benefits at this time.

The enclosed 'Policy reviews - frequently asked questions' document explains how we review your policy, and some of the assumptions we use to calculate the premium levels that are required to maintain the policy's level of protection benefits.

What will happen next?

Your policy's next scheduled review date is 16 August 2014 and we'll write to you then with the results of that review. It's possible that a reduction in protection benefits will be necessary at that time. Your premiums and protection benefits are guaranteed not to change until the next review date."

Due to an error by Phoenix, the 2014 review was missed, and was not carried out until 2016, when Phoenix realised the review had been missed. The review failed. The review letter, dated 27 June 2016, included the following:

"*Your life cover will be reduced to £247774.95 with effect from 27 July 2016. Based on our current assumptions about the future, the reduced level of cover could be maintained by your current premium until the next review date on 16 August 2017. At the end of this period, a further reduction in cover is likely to be necessary.*"

No response was received to this letter; the sum assured was hence reduced, as set out in the review letter. The next review took place on schedule, in 2017. This also failed. The review letter included the following:

"*The current benefit is £247,774.95. Your monthly premium is £239.96. For full details of your cover please refer to the full terms and conditions of your policy.*

As your premiums will no longer maintain your chosen benefit, it is necessary to reduce your guaranteed death benefit to £119,795.89. The change will take effect from 16 August 2017."

Phoenix did not receive a response to this letter. The sum assured was therefore reduced as set out in the letter.

The trustees have told our investigator that the 2016 and 2017 review letters were "*not ever sent*". In response to this, Phoenix has told us that separate review letters were sent to each of the two policyholders. It has also told us the address was changed for one of the policyholders, Mr R, in 2011, but not for the other policyholder, Mrs R. So, the review letters for each after 2011 were sent to different addresses, until Mr R died in 2018, around which time Mrs R's address was updated. Phoenix has provided us with copies of all the letters it says were sent.

A further review was carried out in 2020, and the outcome communicated in a letter dated 22 June 2020. That letter included the following:

"*The current benefit is £119,795.89. Your monthly premium is £239.96. For full details of your cover please refer to the full terms and conditions of your policy.*

As your premiums will no longer maintain your chosen benefit, it is necessary to reduce your guaranteed death benefit to £86,495.77. The change will take effect from 16 August 2020."

The trustees say this letter was received by the remaining policyholder, Mrs R.

Each review letter said "*you may wish to take out an additional Flexible Protection Plan to cover the shortfall*" and invited the policyholder(s) to contact Phoenix for a quote, if they wanted to consider that option.

When discussing the complaint with our investigator, the trustees said:

- The current trustees and remaining life assured, Mrs R, had no knowledge of the policy's existence until approximately 2011, when they were invited to a meeting with Mr R's financial advisor, and were told Phoenix wanted more money to retain the level of cover.

- The advisor said this was the right thing to do, as the policy was worth in excess of £520,000 guaranteed.

- The current trustees decided to pay towards the premiums, as the advisor told them it would be a mistake not to.

Our investigator's view

Our investigator's view evolved as further information became available, and was set out over a number of communications. His ultimate view was:

- From 2014 onwards Phoenix's review communications should have given further information about the status of the policy, and made it clear it was in an unsustainable position, with significant premium increases or sum assured decreases likely.

- However, the 2016 and 2017 review letters were likely sent to the right address and had not been engaged with.

- So, he did not think further information in these letters would have made any difference.

- However, the 2020 review was engaged with. And he thought the policyholder might have chosen to surrender then, had further information been available. So, he thought Phoenix should offer to pay the trust the 2020 surrender value plus a return of the premiums paid since then.

Responses to the view

Phoenix accepted the view.

The trustees did not accept our investigator's view. They responded to the view in calls to our investigator. I have listened to recordings of these calls. The main point being made by the trustees is that they did not receive any review correspondence and, if they had, they would have increased the premium to maintain the sum assured, as this was "a no-brainer", given the amount of the sum assured.

My provisional decision

I recently issued a provisional decision, in which I concluded the complaint should not be upheld. I will quote my provisional findings in full:

"*My findings, in summary, are as follows:*

- *Like the investigator, I think the review correspondence sent after the costs became higher than the premiums, and the policy had therefore become unsustainable, should have contained more information.*

- *I think it more likely than not that the 2016 and 2017 review letters were sent by Phoenix to the correct address for one of the policyholders and therefore received at that address.*

- *It seems likely the letters were not engaged with until some point after the letters were issued or, at least, that the current trustees/policyholder(s) became aware of a significant drop in the sum assured at some point after the letters were issued. And, in either event, there is no evidence to show any action was taken.*

- *In these circumstances, I do not consider Phoenix's failure to provide sufficient information in the 2016 and 2017 review letters has had an impact, as I am not persuaded further information would have led to action being taken.*

- *I am not persuaded this had an impact at the time of the 2020 review either. It seems the letter communicating this review was engaged with; but it did not prompt any action to maintain the sum assured, and I am not persuaded the policyholder would have decided to surrender the policy at this time, even if they did have further information.*

- *I have not seen sufficient evidence to show the decreases to the sum assured were arbitrary. Rather, they are a consequence of rising costs associated with the policy, and the failure by the policyholder(s) to take any action to address this.*

I have set out my findings in more detail below.

Regulatory obligations and the standards of good practice.

The FCA's Principles for Businesses ("the Principles") are relevant to this complaint. Particularly relevant are Principles 6 and 7:

- *Principle 6 – "A firm must pay due regard to the interests of its customers and treat them fairly."*

- *Principle 7 – "A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading."*

The Conduct of Business Sourcebook (COBS) sets out further relevant regulatory obligations. I consider the most relevant obligations here are:

- *COBS 2.1.1R (1) – "A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule)."*

- *COBS 4.2.1R (1) – "A firm must ensure that a communication or a financial promotion is fair, clear and not misleading."*

In 2016, the FCA published a guidance note – "FG 16/8 Fair treatment of long-standing customers in the life insurance sector" – which I think is also a relevant consideration. The guidance was provided in four high level outcomes (with fourteen sub-outcomes). The four high level outcomes were:

- *The firm's strategy and governance framework results in the fair treatment of closed*

book customers.

- *The firm's closed-book customers receive clear and timely communications about policy features at regular intervals and at key points in the product life cycle to enable them to make informed decisions.*

- *The firm gives adequate consideration to, and takes proper account of, fund performance and policy values in a way that ensures it treats its closed-book customers fairly and proportionately.*

- *The firm's closed-book customers are able to move from products that are no longer meeting their needs in a fair and reasonable manner.*

Phoenix's communications and the impact on the policyholder(s) or trustees

Like the investigator, considering the above, I think Phoenix should have provided more information when communicating the review outcomes. For example, a breakdown of the costs, to allow the policyholder(s) to understand how the premiums were being used, and to provide some insight into the sustainability of the policy. And some examples of what might happen in the future, if action were not taken. This information was critical from 2013 onwards as, from that time, the costs associated with the policy exceeded the premiums being paid and the policy was hence in an unsustainable position.

The cost of providing cover isn't fixed and instead increases over time as the lives assured get older. From the inception of the policy, the difference between the premiums being paid and the charges results in an investment pot being built up. The difference between the sum assured and the value of the pot is referred to as the sum at risk, and it is this figure that is used to calculate the charge for providing cover. Policies taken out with the main objective of proving life cover are generally set up on a "maximum" or "standard" basis, with the former using the majority of the premiums to pay for the cost of the life cover, to keep the premiums low in the early years of the policy, and the latter requiring higher premiums in order to build a larger investment pot.

Over time, businesses will undertake reviews to ensure that a policy can continue to provide the chosen level of cover. They will look at a number of different factors such as the size of the investment pot, current mortality rates and investment performance. If they decide the policy is not sustainable at its current premium, the consumer will usually be offered the option of reducing the sum assured or increasing the premium.

In this case, the policy was set up somewhere between a "maximum" and "standard" cover basis and much of the premiums paid were therefore used to provide the life cover, rather than to build an investment pot, which remained relatively (to the sum assured) small (around £5,000-£7,000 over the period from 2009). This resulted in the unsustainable position from 2013, which it seems arose largely from the increasing cost of the life cover, as a result of the policyholders reaching old age.

Had Phoenix communicated in a way which was consistent with its regulatory obligations and standards of good practice, this unsustainable position – and its consequences – should have been made clear to the policyholder(s). However, I am not persuaded, based on the evidence currently available, that this has had an impact.

As set out above, the evidence provided by Phoenix shows the policy passed the 2009 review, and was not then reviewed until 2016 (the next due review in 2014 having been missed by Phoenix). So, the policy was providing £514,211 of cover for £239.96 until 2016 (it appears any automatic annual increases were cancelled following the 2009 review as the

sum assured and premiums did not increase after then).

It therefore seems, from the evidence available, that the current trustees' recollections of a discussion with Mr R's advisor about premiums relates not to a failed policy review but to either automatic annual increases or the decrease in sum assured which, it seems, was considered in 2007 (or perhaps both these things), and likely took place earlier than 2011. In any event, a decision was clearly made to continue paying £239.96 following the 2009 review but not to increase the cover further, and any demand from Phoenix for premium increases before that time (save for a failed review in 1999) did not relate to a failed policy review but the automatic annual increases.

The current trustees say that the review letters from 2016 and 2017 "were not sent at all", and this was only discovered after Mr R became unwell. They do not say exactly when that was, or explain how they became aware. Phoenix has provided copies of correctly addressed review letters sent to Mr R. So, I think the likely position is the 2016 and 2017 letters were sent and received but not discovered by the trustees, acting in the capacity of representatives of the policyholder(s), until a later date, after Mr R became unwell. Or that the letters were sent and received but were not engaged with, and the trustees became aware the reviews had taken place at a later date, after Mr R became unwell.

Either way, it seems that at some point before Mr R sadly died in 2018 the current trustees either saw the review letters they had not earlier seen or became aware changes had been made to the policy which they were not previously aware of. In either event, it seems the policyholder(s) or the current trustees, acting in the capacity of representatives of the policyholder(s) would have become aware the sum assured had fallen from £514,211 to £247,774 to £119,795. And there is no evidence to show they took any action to address this significant decrease in the sum assured, once they became aware of it.

Similarly, in 2020 the trustees saw the review letter when it was issued and therefore became aware of a further decrease in the sum assured at this time. And there is no evidence of any action being taken to address this, beyond a complaint being made.

In these circumstances, am not persuaded that further information in the letters would have led to a different outcome. It seems unlikely to me that the policyholder(s) or current trustees would have acted differently even if the review letters had provided further information.

I think in this case the options available to the policyholder(s), in summary, were to take no action, pay additional premiums to address the shortfall, or to surrender the policy. In practice, no action was taken. So, the question is: would further information have led to the policyholder(s) deciding to surrender the policy or increase premiums? I am not persuaded it would have.

By 2020 the current trustees and remaining policyholder were aware that the sum assured could go down significantly. By this point the sum assured had fallen from around £500,000 to around £87,000. And, as set out above, it seems likely they were aware of a significant reduction at some point before Mr R sadly died. But there is no evidence any action was taken to explore increasing the premiums to make up the shortfall. The evidence (the 2007 request for a reduction in cover and the current trustees agreeing to pay towards the premiums) also suggests the policyholder(s) appear to have been struggling to afford the policy premiums, and that their capacity to pay significantly higher premiums would therefore have been limited.

In my view, if knowledge of such significant decreases did not prompt the policyholder(s) to explore increasing the premiums to make up the shortfall, it is unlikely information which set out that the charges were higher than the premiums, and examples of what might happen in

the future, would have led to such action.

In terms of surrendering the policy, given the relatively low surrender value, the age and health of the policyholder(s) at the relevant times, and the size of the sum assured, I think it unlikely the policyholder(s) would have decided to surrender the policy, had they been given further information.

At the time of the 2020 review the surrender value was around £6,500, which was much less than the amount paid in premiums, the existing £119,795 sum assured, and the proposed £86,495 sum assured. The remaining policyholder was in her 80s and, as I understand it, in poor health. I do not know the detail of the health of the policyholders at the time of the earlier reviews but the difference between the sum assured and the surrender value was significantly larger at these times.

Overall, I am not persuaded that the policyholder(s) (or the trustees, acting their capacity as Mrs R's personal representative, after her health began to deteriorate) would have decided to surrender the policy, had they been provided with further information by Phoenix.

For completeness, given my finding there is insufficient to say the review outcomes were not communicated by Phoenix at all, I should say that the only alternative to the above is that the review correspondence and/or the fact of the sum assured reductions, until 2020, was simply not engaged with at all by the policyholder(s) or the current trustees. And that such a scenario would lead me to the same ultimate conclusion i.e. that Phoenix's failure to provide further information has not had any impact.

The decreases in the sum assured

I appreciate the trustees feel the reductions in the sum assured associated with the policy have been arbitrary. I can understand their disappointment with the reductions. But the available evidence does not suggest the premium increases were arbitrary. Rather, that the combination of the increasing ages of the policyholders and the policy being set up in a way which kept premiums low in the earlier years but did not build a significant investment pot have led, as they generally do with policies of this type, to a significant increase in cost as the death of the policyholder(s) becomes more likely. The result of this is that the premiums need to be increased significantly to maintain the sum assured, or the sum assured will fall to a level which can be sustained by the premiums.

Ultimately, the increase in premium (and/or decrease in cover) are a matter for Phoenix's commercial judgement. And I have not seen sufficient evidence in this case to say Phoenix has not exercised its commercial judgment legitimately. There is an obvious basis for the increases in mortality cost (the increasing risk, associated with the policyholder(s) ages).

So, I have not seen sufficient evidence to show Phoenix has done anything wrong otherwise.

For these reasons, I will not be asking Phoenix to do anything to resolve this complaint."

Responses to my provisional decision

Phoenix accepted my provisional decision, and made no further comments.

The trustees did not accept my provisional decision. They said, in summary:

- There has been no explanation as to why the 2014 policy review was missed. This omission has had a direct and lasting impact on the performance and understanding of the policy.

- It remains unclear who was responsible for the failed 2017 review and why no corrective action was taken at that time.

- The policyholders moved in 2011. Phoenix was formally notified of this address change, and correspondence from Phoenix was sent to the new address. This clearly demonstrates that the address update was properly recorded and recognised by Phoenix.

- They became aware of the policy in 2020 and immediately engaged with Phoenix. They were advised by Phoenix that they would have to take out a new policy, which led them to seek help from the ombudsman.

- There is no clear explanation as to who cancelled the auto-renewal of the policy and how this was actioned. This is a key point of contention that has been completely overlooked.

- The investigator had concluded that Phoenix admitted fault, and that the policyholder was to be refunded the premiums we had paid. This refund was, in itself, a clear admission of wrongdoing by Phoenix. They did not accept this resolution, as accepting it would have resulted in the cancellation of the policy — something they never wanted. Their goal has always been to maintain the policy as intended, not to forfeit it due to Phoenix's own administrative or communicative failures.

- Mr and Mrs R had substantial funds in the bank, so finances were not an issue. The trustees were also willing and able to contribute to the premiums if needed.

- Recently, Phoenix have stopped taking payments for the policy entirely, and they have received no correspondence or explanation as to why this has happened.

- Throughout this entire process, their family has also been coping with significant grief and loss, as well as the added emotional strain of Mrs R's poor health.

- There was a policy of the same structure held by another family member, whose son successfully took Phoenix to court for similar failings. Yet my findings state that Phoenix's actions were "above board." Both policies were identical, so they cannot understand the discrepancy in outcome.

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 reconsidered everything, I have not been persuaded to depart from my provisional findings, quoted above. I have set out some additional findings below, having considered the trustees response to my provisional decision. My final decision ultimately reflects the provisional decision, quoted above, which forms part of this decision. I appreciate this will disappoint the trustees.

The 2014 policy review was missed by Phoenix due to an oversight. It was completed in 2016, and the policy was put in the position it would have been, had the review taken place when it should have done. In the meantime, the sum assured had been at a higher level than it would have been, had the review taken place on time. So, I am not persuaded the missed review has impacted the performance of the policy.

As I set out in my provisional decision, I am satisfied that the address change was executed

for Mr R when it was requested and that review correspondence was therefore sent to the correct address, albeit only for Mr R. So, I am not persuaded the missed review had an impact on the understanding of the policyholders or trustees either; the detail of the review was ultimately shared with them. On the change of address point more generally, I do not think there is anything I can add to my provisional findings.

I note the trustees say, in their response to the provisional decision, that they only became aware of the policy in 2020. I appreciate that may be their current recollection, but it is not consistent with the available evidence, including submissions previously made by the trustees to this service, which set out that the current trustees discussed the policy with an advisor in 2011 and agreed at that time to contribute towards the premiums. Their previous submissions also say that the review letters from 2016 and 2017 "*were not sent at all*", and this was only discovered after Mr R (who sadly died in 2018) became unwell.

I remain of the view set out in my provisional decision i.e. that it seems the trustees were aware of the policy before 2020, and at some point before Mr R sadly died in 2018 the current trustees either saw the review letters they had not earlier seen or became aware changes had been made to the policy which they were not previously aware of.

It is not clear to what extent the review correspondence (or fact of the changes to the policy) was engaged with by the policyholders or the trustees or, if they were engaged with, why the trustees (and policyholders) did not take any action in reaction to it at the time, if they wished to maintain the sum assured and had the funds available to pay the premiums. But Phoenix was clear that the sum assured would reduce (or had reduced) and the policyholders needed to contact it to ask for a quote for an additional policy, if they wanted to retain the existing sum assured. And they did not ultimately make such contact. So, I remain of the view that further information given in the review letters is unlikely to have had an impact.

I note the trustees have referred to cancellation of an auto renewal. I think this might be a misunderstanding as this was a whole of life policy and did not therefore need to be renewed for cover to be maintained. In common with all policies of this type, if additional premiums are required to maintain a sum assured, the policyholder(s) need to agree to that. So, it was the responsibility of the policyholders to ensure they received and engaged with all key policy correspondence. The sum assured was reduced because the policyholders did not ask for additional cover to maintain it, not because Phoenix cancelled something which should have occurred automatically.

I appreciate the trustees are concerned about what they feel is an inconsistency between my decision and a court case they say was decided in favour of a family member who held a similar policy with Phoenix. The trustees have not provided any detail of the court case. But these are fact-specific issues, and we are an informal dispute resolution service, required to make a decision on what is fair and reasonable in the circumstances of each individual complaint made. For the reasons I have given here and in my provisional decision, I am satisfied it would not be fair and reasonable to uphold the complaint the trustees have made.

I note the trustees have referred to Phoenix having recently stopped taking premiums. I appreciate the trustees will likely find this frustrating but, as this is a new issue, it is something they will need to complain to Phoenix about in the first instance, if they are dissatisfied, and they can then refer it to us as a new complaint, if they wish to.

My final decision

For the reasons given, I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the trustees to

accept or reject my decision before 6 January 2026.

John Pattinson
Ombudsman