

The complaint

Mr B, on behalf of the estate of Mrs B, complains about the reduction of the sum assured of a reviewable whole of life policy (RWOL).

What happened

The RWOL policy commenced on 10 March 1996 with a sum assured of £30,000 and a monthly premium of £84.30.

I have been provided with a copy of the key features of the RWOL policy, under risk factors it states *'The sum assured is guaranteed for the first ten years. The level of cover will then be reviewed and periodically thereafter. On a review, the level of your cover may have to be reduced.'* It goes on to explain *'What is a plan review?'*:

- *"It is the occasion when we calculate whether the premium level is sufficient to maintain the sum assured in force.*
- *The first plan review will take place after 10 years and periodically thereafter.*
- *If the premium level is inadequate to maintain the sum assured at a plan review the sum assured will be reduced. However, in some instances it will be possible, under the Plan Review Option, to take out a new plan to replace the lost cover, without having to provide evidence of good health.*
- *The sum assured is guaranteed between plan reviews."*

In February 1998 the late Mrs B wrote to Phoenix Life, she said that she was considering increasing her cover. She asked for assurance that there would be a payment of £30,000 upon her death as long as she paid £84.30 per month for her life. Phoenix Life responded to Mrs B on 18 February 1998, they said:

"I would like to confirm as requested that your policy is a life time plan for the sum of £30000.00 life assurance payable on death provided that all premiums of £84.30 payable monthly is met through out your life.

I trust that this is sufficient. However, should you have any other enquiries please do not hesitate to contact us."

Phoenix Life have said Mrs B raised a complaint with them about the sale of the RWOL policy. They say they provided a final response to that complaint in April 1998, and Mrs B referred the complaint to an ADR scheme.

In February 2006 Phoenix Life provided the outcome of the first review of Mrs B's RWOL policy. The review failed, the options provided to Mrs B were:

- Option 1 – Take no action and the sum assured will reduce from £30,000 to £20,780 as of 10 March 2006.

- Option 2 – Take out a new plan to cover the reduction to the sum assured.

Phoenix Life have provided a call note dated 9 March 2006 which states that Mrs B's son called to complain that the RWOL policy had been mis-sold. The note sets out that the caller explained Mrs B understood that the premiums would be set for her lifetime, and she wasn't told the sum assured could be reduced.

Phoenix Life didn't provide a response to the complaint, they explained to Mrs B that they had addressed a complaint about the mis-sale of the policy already, in 1998.

On 15 February 2007 a complaint was logged internally by Phoenix Life. This set out that Mrs B's son was now making the monthly payments and Mrs B was unhappy that the sum assured was being reduced to around £18,000 as she was sold the policy as having a guaranteed sum assured of £30,000. And that there was no surrender value.

The RWOL policy was reviewed annually from 2006 with the majority of, if not all, reviews failing. Letters were sent to Mrs B with the outcome of the reviews in March of each year. Two options were provided to her each year, take no action and the sum assured would be reduced, or take out a new plan to cover the reduction to the sum assured. Mrs B didn't respond to the reviews.

Mrs B sadly passed in December 2018. Mr B was advised the sum assured was around £4,900, he raised a complaint with Phoenix Life about the administration of the policy.

In December 2023 Phoenix Life provided their final response letter. In summary they said:

- A complaint about the contents of the letter Phoenix Life issued in 1998 has been brought out of time.
- Mrs B had received regular reviews but had not contacted Phoenix Life to question the reducing sum assured or select any option following those reviews.
- The policy Mrs B held was a RWOL policy and it had been administered in line with the terms and conditions.

Mr B didn't agree with the outcome and so he referred the complaint to this service. In summary he said:

- Mrs B relied on the information phoenix Life provided to her in their 1998 letter. Phoenix Life should have pointed her toward the policy documents instead and explained it was reviewable.
- Due to Mrs B's age at the time, Phoenix Life ought to have been alerted that she was vulnerable.
- The letter of 1998 was very misleading, Phoenix Life should honour what they set out.

An Investigator considered the complaint and provided an assessment. In summary they said:

- This service couldn't consider a complaint about the sale of the policy as it had been brought out of time.
- About the administration of the policy, Phoenix Life should have provided Mrs B with clear and not misleading information when her RWOL reached the 'tipping point'.
- The 'tipping point' was reached in 2014.
- Had Phoenix Life provided clear and not misleading information to Mrs B she would likely have surrendered the policy.

Following this assessment there was some discussion between the parties but ultimately Phoenix Life disagreed with the outcome. A revised view was issued, the Investigator said that because Mrs B had not surrendered the policy or engaged with Phoenix Life about the changes to her policy from 2006 onwards, it's most likely, even if she had clear and not misleading information she wouldn't have done anything differently. She would have continued to make the payments as she did do.

Mr B didn't agree with the assessment, he was unhappy with the change in opinion between the first and second assessments. So the complaint was passed to an Ombudsman for review. Mr B provided some final remarks for the Ombudsman which, in summary, were:

- Mr B is concerned with the sale of the policy, she was 72 at the point of sale. Phoenix Life wrote to Mrs B on 18 February 1998 to offer her reassurance that the premiums would not change.

I issued my Provisional Decision, the findings of which form part of this Final Decision and are set out below. I didn't uphold Mr B's complaint, in summary I said that:

- In 2004 the policy reached its tipping point and so Phoenix Life should have provided clear information about the policy within 12 months. But they hadn't.
- Had Phoenix Life provided the information they should have done, Mrs B wouldn't have done anything differently than she did at the time.

Mr B responded, he didn't agree with the Provisional Decision, he said in summary,

- The letter of reassurance Phoenix Life sent to Mrs B in 1998 ought to be pivotal in the review of this complaint. This is the only reason why she continued with the policy. Phoenix Life have admitted now that this letter was poorly worded.
- Consideration should have been given to the difficulty Mrs B may have faced in interpreting the documentation provided to her. Particularly after she had been reassured earlier in her life by Phoenix Life about how the policy would work.
- There has been a change of opinion from the initial assessment Mr B received, which upheld the complaint.

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 appreciate this will come as a disappointment to Mr B, but having reconsidered everything, including his submission after the Provisional Decision, I am not upholding this complaint. My reasoning remains in line with the Provisional Decision, which forms part of this Final Decision and is set out below.

To Mr B's additional points, the letter Phoenix Life issued to Mrs B in 1998 was considered by me. As set out in more detail below, Mrs B had further communications with Phoenix Life after this letter, and she raised a complaint about the sale of this policy. So, I think it's most likely the letter of 1998 did not provide Mrs B with full comfort that the policy was not a reviewable plan. Had it done so I wouldn't have expected her to raise a complaint with them. And so, I can't agree that the contents of this letter were the only reason she did not surrender the policy.

I have considered what I think Mrs B would likely have done, had she received clear information from Phoenix Life. So, had she not received possibly confusing or incomplete information, what would she have chosen to do with the policy. I have concluded on balance

that I don't think she would have taken a different approach to the one she did take.

My investigation of Mr B's complaint is an independent review of the information provided to this service by both parties. Previous assessments do not have an impact on my findings.

My final decision

I don't uphold the estate of Mrs B's complaint about Phoenix Life CA Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs B to accept or reject my decision before 2 January 2026.

Provisional Decision

What I've provisionally 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 appreciate this will come as a disappointment to Mr B, but I don't have jurisdiction to consider a complaint about the sale of this policy. And, having reviewed all of the evidence I'm not upholding his complaint about the administration of it, I will go on to explain why below.

Sale

Mr B complains that this policy was mis-sold to Mrs B in 1996. He has said that Mrs B was vulnerable and was told that her premiums would be fixed, with the life cover provided in the sum of £30,000 for the life of the policy.

This service cannot consider a complaint if it has been referred out of time, or if it has already been considered by a comparable ADR scheme.

Phoenix Life have said that Mrs B complained about the sale of this policy in 1998, and that following their final response letter she referred the complaint to the Pensions Investments Arbitration (PIA) who were an equivalent ADR scheme prior to the Financial Ombudsman Service. Due to the time that has passed since 1998 they have not retained any documents in relation to this complaint. As that was over 20 years from when this complaint was referred, it is reasonable that those documents are not available.

Phoenix Life have provided evidence that a complaint about the sale of the policy was again referred to them in March 2006, and February 2007 following receipt of the annual review letters. On both occasions Phoenix Life explained to Mrs B and her representative that a complaint about the sale of this policy had been referred and considered in 1998. I understand from the complaint notes provided from 2006 that at that time the documents from the 1998 complaint were available to be reviewed. Mrs B didn't respond to Phoenix Life in either 2006 or 2007 to argue that a mis sale complaint had not been referred in 1998.

Based on the evidence I have seen I am satisfied that Mrs B complained about the sale of this policy in 1998. And so, I am not considering it, either because:

- Mrs B referred this complaint to the PIA, a former scheme, in around 1998 for their consideration – and so it wouldn't be appropriate for me to consider it again.

- The referral to this service occurred longer than 6 months from when Phoenix Life issued their final response to Mrs B in April 1998. And so, the referral to this service has been made out of time.

I appreciate Mr B has mentioned the letter Phoenix Life wrote to Mrs B on 18 February 1998 in response to her asking them for confirmation about how the policy worked. I can understand why this letter is important to Mr B. And, I can understand why, if reviewing it in isolation, Mr B feels this evidence is extremely important for this complaint. However, based on all the surrounding evidence this was the start of further communications with Phoenix Life about the policy, which culminated in Mrs B raising a formal complaint with them.

Administration

When considering what's fair and reasonable in the circumstances, I need to take account of relevant law and regulations, regulator's rules, guidance and standards, codes of practice and, where appropriate, what I consider to have been good industry practice at the relevant time. In reaching my conclusions, I've considered in particular:

- The FCA's Principles for Businesses, in particular Principle 6 and Principle 7;
- The FCA's Conduct of Business Sourcebook (COBS), in particular COBS 2.1.1R(1) and COBS 4.2.1R(1)
- The FCA's Final guidance on the "Fair treatment of long-standing customers in the life insurance sector" (FG16/8).

The key complaint point Mr B has made about the policy is that he is unhappy the sum assured has reduced over time.

I think it's helpful to explain firstly how RWOL policies generally work in practice. The premiums paid cover the cost of life cover and any charges. Anything above that is invested to build up a fund. At the start, when the cost of life cover is lower, more of the premiums are invested. Generally, as time goes on the cost of the life cover increases as the policyholder gets older. Which means that it's likely there will come a time when the premiums paid no longer meet the costs of the life cover and charges on their own (the tipping point). The investment fund that has been built up is used to help pay the increasing cost of the life cover. However, there inevitably comes a point where the life cover costs exceed the premium and the investment fund is depleted. Unless the fund's growth outpaces the rise in the costs of the life cover.

Eventually the policy provider will conclude that the premiums being paid, and the fund value, are no longer able to support the level of cover. Therefore, to maintain the policy either the premiums being paid will need to increase, usually significantly, and are likely to continue to increase as the consumer gets older and the life cover cost continues to increase. Or the sum assured is reduced by a significant amount. This is what has happened in this case.

The opportunity for consumers to make decisions about key changes to the policy is a key event in the life of the policy. The decision becomes more difficult to make the longer the consumer pays into the policy and the options available to mitigate poor outcomes start to diminish. Information about a RWOL policy should be provided to consumers in a clear, fair and not misleading way. With information about the changes later down the line to the policy the consumer might decide on a number of actions:

- To adjust the terms of the policy earlier in its life. For example, by increasing premiums earlier, so more is paid over a longer time creating a smoothing effect. So, premiums will be higher than they were at the start of the policy, but not as high as they might otherwise have been at the point of a failed review.
- A consumer may decide that a policy is not worth maintaining at an earlier point and elect to surrender it.
- Or a consumer may decide that its worth maintaining the policy on its existing terms right up until the point the policy fails a review.

In broad terms I consider it was incumbent on Phoenix Life to have provided the following information in a clear fair and not misleading way to enable the late Mrs B to make an informed decision:

A clear outline of the existing cover – including the sum assured and premiums.

- The current surrender value.
- The life cover costs (including administration charge).
- A clear explanation that the costs were no longer being met by premiums.
- A clear explanation of how long the policy was likely to be sustainable on its existing terms (reasonable approximations would suffice).
- Estimates of what the policy might cost at the point when the policy was likely to cease to be sustainable on its existing terms to give information that would allow Mrs B to fully appreciate the risks and consequences of not taking any action.
- A clear explanation of the poor outcomes a consumer might face at the point the policy became unsustainable on its existing terms. This should include a clear outline of the levels by which premiums would need to increase (or the sum assured would need to decrease) to maintain the policy at that point (reasonable approximations or illustrative examples would suffice).
- A clear explanation of the options available to a consumer that were aimed at mitigating that outcome, together with the costs and benefits of each option (including increases in premium levels, decreases in the sum assured or surrender of the policy).

I've been provided with the annual breakdown of total premiums paid and total cost of the life cover. The policy was self-sufficient (the annual premiums covered the cost of the life cover and charges) until 2004. During the policy year of 2004 the total cost of the policy was £1,093.51 and total premiums paid were £1,011.60, leaving a shortfall. Which means that at some point during 2004 the policy reached it's 'tipping point'. The point where the premiums needed to be topped up by the fund for the sum assured to be supported. I would expect Phoenix Life to have provided the late Mrs B with the above information within 12 months of this point, in order for her to make an informed decision about what she wanted to do with the policy.

I've considered the communications Phoenix Life sent to Mrs B after the end of the 2004 policy year. No correspondence was issued until the first review on the tenth anniversary of the policy in 2006. The 2006 review letter didn't provide the current surrender value, life cover costs or a clear explanation that the costs were not being met by the premiums. There

was no estimate of what the policy may cost, no clear explanation of the options available to Mrs B along with the costs and benefits of each option.

The policy was reviewed annually following the 2006 review letter, none of the reviews provided the Mrs B with clear and not misleading information as I have described above. So, I can't agree that Phoenix Life provided Mrs B with everything she needed in order to make an informed decision about the policy.

What would Mrs B have done differently?

I've considered what, if anything, Mrs B would have done differently if she'd been provided with all the information set out above. Had she been given clear information at the tipping point, or when she made withdrawals from the fund, the options open to her would have likely been:

- Cash in the policy at the cash in value.
- Increase the premiums to maintain the level of the sum assured.
- Reduce the sum assured.

Following the review in 2006 a representative for Mrs B contacted Phoenix Life to express dissatisfaction that the sum assured would be reduced. Mrs B asked if she could cash the plan in but was advised there was no cash in value. Mrs B continued to make the monthly payments. Following the 2007 review a similar call was made to Phoenix Life to again note dissatisfaction that the sum assured would be reduced. Mrs B continued to make the monthly payments despite receiving a failed review letter and notification of the sum assured decreasing each year.

At the end of 2005, 12 months after the policy met its tipping point the cash in value of the plan was around £340. I don't think this would have been enough of an incentive for Mrs B to cash in the policy at this time. I say that because the monthly payments were £84 per month and she continued to make those payments regularly, despite knowing that the sum assured was decreasing each year. So, £340 was only around four months' worth of premiums.

Mrs B was given the option to increase the premiums in order to maintain the sum assured each year. But she never made the decision to do so. In internal notes from February 2007 Mrs B had told Phoenix Life that she had maintained the premiums even though that had been a struggle sometimes. So, I can't conclude that she would have chosen to increase the monthly premiums to maintain the sum assured.

The only other option available to her in 2005 would have been to allow the sum assured to be reduced. This is the option she did chose and the one I think is most likely to have been the case had she been provided with clear information in 2005.

Summary

It's not appropriate for me to consider a complaint about the sale of this policy. That's because it has already been considered some time ago.

I don't think Phoenix Life acted correctly in 2005, they should have provided Mrs B with clear and not misleading information about her policy and the likely effects over the longer term. However, had Phoenix Life given this information to Mrs B I think she would still have chosen to reduce the sum assured. That's because she did choose each year to allow the sum assured to be reduced by not responding to the review letters. And the only other options available to her would have been to surrender the policy – which would have provided her with a small amount (around 4 months premiums) and no ongoing life cover.

She didn't do this even though she complained to Phoenix life on three occasions that the product was not operating as she thought it would. The final option would have been to increase the monthly premiums. I don't think Mrs B would have been in a position to do so, as she explained the Phoenix Life in 2007 that she had at times struggled to make the current premiums.

I appreciate this will come as a disappointment to Mr B but I don't intend on upholding this complaint for the reasons set out above.

My provisional decision

I don't intend on upholding Mr B's complaint about Phoenix Life CA Limited.

Cassie Lauder
Ombudsman