

The complaint

Mr P and Ms P, as representatives of Mrs P's estate complains about how Phoenix Life Limited (Phoenix) administered Mrs P's reviewable whole-of-life (RWOL) policy.

What happened

The late Mrs P took out a RWOL policy on Mr P's life with Phoenix in October 1999. The policy provided a sum assured of £50,000 and waiver of premium for a monthly premium of £69.41, which reduced to £67.38 once the waiver of premium expired.

In 2009 following a review of the policy, Phoenix reduced the sum assured to £36,102, and again in 2019 to £12,164. The policy was reviewed again in 2022 with Phoenix writing to Mrs P to explained to maintain her level of cover it would need to increase her monthly premium from £67.38 to £100.77, or alternatively reduce the sum assured further to £8,814.91.

In response to those proposed changes Mrs P wrote to Phoenix to complain about the falling value of the sum assured. In her view this was happening due to the fees being charged to manage her policy. She also felt this policy had been mis-sold to her.

Phoenix considered her complaint but in the main didn't agree it should be upheld. It explained another firm had sold her this policy and so wasn't responsible for how it was sold to her. It was however responsible for how this policy was administered but was satisfied the reviewable nature of her policy had been explained to her in the policy literature when she took it out, and that it had acted fairly in reducing her level of cover as the policy terms allowed it to. Phoenix also explained the reduction in sum assured was caused by the cost of the life cover increasing rather than investment charges within her policy. It did find there were delays in sending the 2022 review letter and arranging for the replacement copy. To put that right it offered her £270 for those delays and for the cost of her phone calls when trying to request this letter.

As Mrs P didn't feel Phoenix had fairly answered her complaint she asked our service to look into what happened further. Sadly, shortly afterwards Mrs P passed away, I wish to pass my condolences to her family. Her estate's representatives, Mr P and Ms P, now bring the complaint on her behalf, as it was a solely owned policy it would pass into her estate rather than to Mr P by survivorship or other assignment.

One of our Investigators considered the matter and thought it should be upheld in part. In his view Phoenix weren't responsible for the sale but did agree it hadn't provided clear information about the policy to Mrs P in the reviews carried out. And if it did, that it was likely Mrs P would've surrendered the policy in 2009 as at that time she wouldn't have considered it worth keeping. He suggested that Phoenix refund the surrender value with interest in addition to the compensation it had already offered.

Initially both parties accepted, but on finding out that the surrender value in 2009 was £0, Mr P didn't feel the outcome reached fairly resolved matters.

As an agreement to resolve this matter couldn't be reached, this complaint was passed to me to decide. I reached the same outcome as our Investigator that this complaint should be upheld, but both my reasons and how I thought Phoenix Life Limited should compensate Mrs P's estate differed.

In my provisional decision I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Sale of the policy

Firstly, around the sale of this policy, I can only consider that against Phoenix if it, or a firm it since took over and accepted the liabilities of, sold that policy. Based on the limited information available, that sale was carried out by an insurance broker which Phoenix wasn't responsible for the actions of. I can't then consider any aspect of how this policy was sold to Mrs P.

Policy reviews

Phoenix has however since taken over this policy from the original provider and would be responsible for how the policy was presented to her by that firm and how it has been administered since.

The type of policy Mrs P had was a RWOL policy. These typically work by using the premium to pay for life cover with the excess, if any, being paid into an investment fund. Over time as the cost of the life cover increases, which it does with age, less of the premium is invested and more spent to maintain the life cover. The aim of this arrangement is that over time the investment element grows sufficiently to offset the higher costs of life cover in the future. The policy is then reviewed at regular intervals to evaluate whether the value of the investment fund, future premiums to be paid and the anticipated future cost of life cover would allow the policy to continue on the current terms. If that assessment is that it can't, then the review would "fail", with options being set out to sustain the policy for longer. Those typically being an increase in the premium paid, the sum assured being reduced, surrendering the policy, or taking no action and letting the policy lapse once it can no longer sustain itself.

Phoenix has been able to provide a policy document from 1999, the year she took out her policy. I can't be sure if this document was in use when Mrs P took her policy out but even if it wasn't, I think it's likely indicative of the policy terms that would've applied to Mrs P's policy.

Clause 7 of this document explains that the premium and sum assured are guaranteed for the first 10 years. At that point it will be reviewed to determine whether the policy can sustain itself on its current terms until the next review in five years' time. This will repeat until the policyholder reaches 70 years old, at which point the review will become annual. In those reviews, if the firm doesn't think the policy will sustain itself then it will reduce the level of cover, unless the premium is increased.

I'm satisfied then that Mrs P's policy terms sufficiently explained her policy was reviewable, which meant her premium or sum assured could change. It follows then I think Phoenix wouldn't be acting unfairly by carrying out those reviews as it's terms likely allowed it to.

But to apply any changes from those reviews fairly, Phoenix would've needed to present information about the policy and the suggested changes to her in a clear, fair and not misleading way. I say this because in meeting the regulator's requirements around this firms needed to ensure that they provide policyholders with sufficient information for them to be able to make an informed decision about what changes to make on their policy, and how this might affect it in the future, before it's too late for them to do anything about it.

In Mrs P's circumstances her policy was reviewed as scheduled, in 2009, 2014 and 2019. With a review also taking place in 2022.

The review letter from 2009 set out that Mrs P was paying a monthly premium of £69.41 in return for a sum assured of £50,000. Her plan at this point had no investment value, showing a value of -£98.96. Phoenix had concluded that the policy had failed the 2009 review and so had set out two options to Mrs P, either reducing her sum assured from £50,000 to £36,102, or in effect increasing her premium by £50.01. This review letter omits information I think

Mrs P would've needed to make an informed choice about what to do with her policy. In particular the review letter doesn't provide information about the cost of life cover or what impact the proposed changes would have on the long term sustainability of the policy. Given the premium wasn't far away from exceeding the life costs and the investment pot having no value, I think clear information about those factors ought to have been included in the review.

In my view, given Phoenix's position in the market and its experience at this time of these policies, it would've been reasonably aware from those factors that Mrs P would've needed to make significant changes to her policy in the future. There was then an imbalance of knowledge between Phoenix and Mrs P, and around the time of the 2009 review I think Phoenix ought to have corrected that imbalance by providing clear warning to her about the extent of the changes that would likely be needed, such as that I've set out above.

I've considered then what Mrs P would've likely done had Phoenix presented clear information and warning to her about the future prospects of her policy. Having done so, I think it's likely she would've surrendered the policy and sought alternative cover elsewhere. I say this because at this point she would've been aware the investment part of their policy had no value and the impact this was going to have on her policy being able to sustain itself into the long term. I've also taken account testimony that this policy was taken out to provide financial protection to her family in the event of Mr P's passing.

I take the view then she would've likely by the 2009 review considered that this policy wouldn't be able to provide the level of cover she wanted for long enough to be worthwhile. I say this because had she been provided with clear information she would've seen that her policy would require significant increases in premium or significant falls in the sum assured to a level that would no longer meet her needs. Given Mrs P didn't at any review opt to increase her premium I think it's unlikely she would've done so had clear information been presented to her. I don't know if she would've been able to obtain alternative cover elsewhere but regardless I think in Mrs P's circumstances she would've cancelled this policy having seen it was unlikely to support a useful enough sum assured for a much longer.

It follows then I intend to say had Phoenix provided clear information in the 2009 review, I think the most likely action is she would've cancelled the policy. I'll set out below how I intend to direct Phoenix to resolve this matter.

Fund performance and charges

I've also considered the points made about the underlying investment fund Mrs P's policy invested in. Mrs P, and her representatives since, say that the performance of that fund and the overall charges caused the sum assured to fall as it did. But I've not seen I can agree.

As I mentioned above Mrs P's premiums were paying for the life cover with any excess being invested, intending to build a large enough pot to offset the cost of life cover in the future, which increases with age. It wasn't until after the 2009 review do I think the tipping point was reached, so it does appear the investment fund underperformed against what would be needed to help sustain the policy. But that doesn't mean Phoenix, who I understand to be the fund manager of that fund, mismanaged it.

I say this because given then passage of time there's there isn't evidence available about how the fund was managed, with more recent evidence showing it unlikely the fund wasn't being managed in line with its objectives. The performance of these funds are dependant on the growth and income generated by the assets within it, and sufficient performance to sustain her policy wasn't guaranteed. On balance then I think it's more likely the performance, if that was a factor, was driven by market factors rather than anything Phoenix failed to do in its management responsibilities of the fund. Nor have I seen these were caused by the application unfair charges.

What much more likely would've had an impact on Mrs P's policy is the cost of providing the life cover itself. I say this because the life cover becomes more expensive with age as the risk of the insurer having to pay a claim increases. I can see from Phoenix's records that the life costs for Mrs P's policy increased in that manner. Those inevitably would've continued to have a drag effect on the amount that could be invested by reducing the potential growth that could be accumulated to offset the higher life costs in the future. But as I've set out above this is how these policies work, and I'm satisfied Phoenix had set that out clearly in its product literature at the time.

Lastly the evidence shows Phoenix caused Mrs P a degree of frustration and inconvenience around the delays in sending letters to her and the costs incurred by her having to call Phoenix to resolve that. As I've mentioned Phoenix accepted those failings and already offered to compensate her £270 for those issues. I'm satisfied the offer it's made already around that was fair and in line with what I would've awarded for the impact of those repeated issues.

I intend to say then the offer Phoenix has already made around the service it provided to Mrs P is fair and reasonable.

Putting things right

In compensating Mrs P's estate, I intend to direct Phoenix to pay an amount to her estate that reflects:

- *The surrender value as it would've been at the 2009 review (which I understand to be £0), and*
- *A refund of the premiums paid since the 2009 review, and*
- *8% simple interest to reflect the loss of use of those funds on:*
 - *The surrender value – from the 2009 review until, if it was encashed, the surrender date, or if remains in force, to the date of settlement.*
 - *The premiums paid – from the date each premium was paid until settlement.*
- *Less any surrender value that has been paid to Mrs P, or her estate.*
- *Separate to the above, pay £270 to Mrs P's estate for the distress and inconvenience caused to Mrs P as already offered, if it hasn't already paid that amount to her or her estate.*

The above is on the basis that the policy, if still in place, ends.

By making this award I'm putting Mrs P's estate in the position she would've been in had she cancelled the policy in 2009 and paid nothing further towards it.

It would be fair and reasonable for me to award the refund of premiums since 2009 given Mrs P's estate's representatives acceptance of my decision would mean there would be no cover in place, and it isn't now possible to source replacement cover."

Both Mr P, as representative of Mrs P's estate, and Phoenix accepted the conclusions reached in my provisional decision and provided no further comment or submissions. As responses from both had been received, the complaint was passed back 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.

Having done so given both parties have accepted the conclusions I reached in my provisional decision and provided no further comment or submissions for me to consider, I see no reason to depart from the conclusions I reached in that.

It follows then my final decision is the same as my provisional decision.

Putting things right

In compensating Mrs P's estate, I direct Phoenix to pay an amount to her estate that reflects:

- The surrender value as it would've been at the 2009 review (which I understand to be £0), and
- A refund of the premiums paid since the 2009 review, and
- 8% simple interest to reflect the loss of use of those funds on:
 - The surrender value – from the 2009 review until, if it was encashed, the surrender date, or if remains in force, to the date of settlement.
 - The premiums paid – from the date each premium was paid until settlement.
- Less any surrender value that has been paid to Mrs P, or her estate.
- Separate to the above, pay £270 to Mrs P's estate for the distress and inconvenience caused to Mrs P as already offered, if it hasn't already paid that amount to her or her estate.

The estate's acceptance of the above will allow ReAssure to end the policy, if it is still in place.

My final decision

I uphold this complaint and direct Phoenix Life Limited to settle it as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs P to accept or reject my decision before 16 January 2026.

Ken Roberts
Ombudsman