DRN-6039084

The complaint

The trustees (Mrs B and Mr B) of the B Trust (the 'Trust') complain about a failed review of a reviewable whole of life policy ('RWOL') underwritten by Phoenix Life Limited (Phoenix Life).

What happened

Mr B is representing the B Trust and so I will refer to him throughout this decision. Mr B took out a joint life RWOL policy which commenced on 10 August 1984, with yearly increments.

I have been provided with the terms and conditions of the policy which state under 'Plan Reviews':

> *"The progress of your Plan will be reviewed after 10 years, and thereafter every 5 years (every year after age 75). At each review the Company will calculate the maximum level of Guaranteed Death Benefit which it is possible to maintain up to the next Review Date. If necessary the Guaranteed Death Benefit will be reduced to this level."*

The policy had its first review in 1994, Phoenix Life say the policy passed this review. Reviews occurred every five years with the policy failing each one. At each review point Mr B's sum assured was reduced, with his monthly premiums remaining the same.

Mr B raised concerns about the sale of this policy in early 2016 with Phoenix Life. On 14 January 2016 Phoenix Life provided their response to Mr B's complaint about the sale of the policy. They upheld it and offered Mr B a non-reviewable fixed life cover policy for a premium of £75.77 per month for a sum assured of £81,725. Mr B didn't take up this offer and so the policy continued on a reviewable basis.

On 17 June 2019 Phoenix Life sent Mr B a review outcome letter, this explained that the review had failed. Mr B's sum assured at the time was £72,464.18 with a monthly premium of £92.03. The letter explained that it was necessary for the sum assured to reduce to £40,167.47 in order to maintain the benefits. Mr B was offered the option of taking out an additional policy to cover the shortfall in sum assured. I understand Mr B didn't respond to this communication and so the sum assured was reduced.

Unhappy with the reduction in his sum assured, Mr B referred a complaint to Phoenix Life. He said that the policy had been mis-sold, and he was unhappy that the sum assured had reduced significantly.

An Ombudsman issued a Jurisdiction Decision in relation to the sale of this policy – they determined it was out of time. As such I will not comment on the sale of this policy within this decision. I am considering the administration of the policy, in relation to the reduction in benefits.

Phoenix Life provided their final response on 8 November 2023, in summary about the complaint I'm considering here, they said:

- The plan is a RWOL plan which would be reviewed after ten years and then every 5 years until the age of 75.
- The plan had a guaranteed benefit increase of 10% per annum.
- Phoenix Life carry out a calculation which takes into account a number of factors at each review to determine the maximum benefit that can be supported to the next review.
- When the plan was reviewed in 2019 it was necessary to reduce the death benefit.

Unhappy with the response Mr B referred the complaint to this service. An Investigator considered it. They didn't uphold the complaint. In summary the Investigator said that Phoenix Life ought to have provided Mr B with information to help him make a decision about his policy at its tipping point. But they hadn't done so. However, they went on to conclude that even if Mr B had been provided with clear information it's most likely he would have continued to pay the premium as he always had done. And so the complaint was not upheld.

Mr B remained unhappy with the assessment and asked for the complaint to be considered by an Ombudsman.

I issued my Provisional Decision, all parties have responded and so I will now go on to issue my Final Decision. Phoenix Life and Mrs B had nothing further to add. Mr B was confused as to why this complaint had been brought by the B Trust. He said he didn't think he was part of the trust anymore.

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.

Mr B raised two complaints against Phoenix Life, about two different life assurance policies. For clarity this is my final decision about the complaint he raised about the life assurance policy thats reference starts with B. This is a joint life policy, the lives assured are Mr and Mrs B. The policy is written in trust, and Mr B is a trustee.

Mr B raised a separate complaint – which I am not deciding on here, about the policy which begins C. An Investigator considered his complaint and explained that he is no longer a trustee in relation to the C policy.

I have reconsidered the arguments made and all the evidence provided to this service about the administration of policy B. I appreciate this will come as a disappointment to Mr B, but I don't uphold this complaint. My decision remains the same, for the same reasoning, as set out within my provisional decision which forms part of this final decision, the contents of which I have provided below.

My final decision

I don't uphold this complaint about Phoenix Life Limited, for the reasoning set out below.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr B to accept or reject my decision before 19 January 2026.

"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 having done so I'm not upholding this complaint, I will go on to explain why below.

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 is that the benefits – the sum assured has reduced significantly.

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 to Mr B's policy.

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.*

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 August 1998. In August 1998 the mortality rate was £96.63 and the total premiums paid were £92.03, leaving a shortfall. Which means that in August 1998 the policy reached its '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 Mr B with the above information within 12 months of this point, in order for him to make an informed decision about what he wanted to do with the policy.

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 Mr 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 Mr 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 not been provided with any correspondence that was sent to Mr B by Phoenix Life following the tipping point of the policy. But, they have said that in 1999 the policy failed its review. I have been provided with a copy of the 2004 failed review and so I have considered what information Phoenix Life included within that review. It set out that the premiums were unable to sustain the sum assured to the next review date – in 2009 and provided the sum assured. The letter offered Mr B an opportunity to take out an additional policy to cover the shortfall in sum assured. But, it didn't provide Mr B with details about an additional policy – for example how much more per month he would need to pay. And it didn't provide any information about the surrender value, life cover costs or an explanation about how long the policy was likely to be sustainable for.

In addition, Phoenix Life didn't explain the poor outcomes which Mr B could face in the future with an indication of the levels by which the premiums may need to be increased, or the sum assured decreased by in order to maintain the policy long term. In the absence of the 1999 *review document I am satisfied that it is most likely any correspondence issued at this time to Mr B would have provided the same information as the review outcome letter of 2009.*

Based on the above, I can't agree that Phoenix Life provided Mr B with everything he needed to make an informed decision about the policy within 12 months of it reaching its tipping point in August 1998. Or at any of the reviews that followed.

What would Mr B have done differently?

I've considered what, if anything, Mr B would have done differently if he'd been provided with clear and not misleading information about the policy. Had he been given clear information at the tipping point, the options open to him would have 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.*

Mr B has said that the policy was initially taken out to provide cover for his family as he was setting up a business. Mr B had three children who were dependant on him so I think the cover was important to him and needed. He has explained that in 2008 two of his children were at university and one was in college.

As the cover was important to Mr B, particularly in 1998 which was within 10 years of the policy being taken out, I don't think, on balance, he would have chosen to surrender it. At each failed review Mr B did not enquire about increasing the premium to maintain the sum assured, and he continued to make the monthly payments even though the sum assured had decreased significantly between 1998 and 2019. And, in 2016 Phoenix Life offered Mr B a non-reviewable policy which would provide a fixed sum assured at a fixed premium. He didn't accept this offer. So, Mr B chose to keep the policy on its reviewable terms at the time. I therefore think it is unlikely that in 1998 Mr B would have decided to make changes to his policy for example increase his premiums or reduce the sum assured at that time.

Based on the above, Mr B's testimony and what actions he did take, I can't conclude that given more information Mr B would have done anything differently. As such, I'm not upholding this complaint.

Summary

Mr B has a reviewable whole of life policy with Phoenix Life. The terms and conditions of the policy allow them to review it and make changes to the sum assured. So, I can't say Phoenix Life have done anything wrong when they have carried out their reviews. However, Phoenix Life ought to have provided Mr B with more information about the future of his policy so that he could make an informed decision about what to do. I can't see that Phoenix Life provided him with his information.

Had Mr B received more information about his policy I don't think he would have done anything differently than he did do – which was continue with it on a reviewable basis. I say that because the benefits of the policy are important to him, so I don't think he would have surrendered it. And he didn't accept Phoenix Life's offer to change the policy to non reviewable in 2016, so I don't think he would have made any changes to the policy."

Cassie Lauder
Ombudsman