DRN-6039769

The complaint

Mrs O is unhappy with the policy she holds with Phoenix Life Limited (Phoenix Life) as the premiums have increased significantly.

What happened

Mrs O and her husband at the time signed an application to take out a joint life first event self-assurance lifetime policy (SAL) with Phoenix Life in June 1999. She has explained this was to provide for her children. The adviser noted within the application was Firm MR. An initial sum assured, and critical illness benefit was noted as £200,000 taken on a maximum basis with a monthly premium of around £167 per month.

I've been provided with a copy of the SAL policy documents. Within the policy provisions document under the section entitled "*GENERAL PROVISIONS AND DEFINITIONS"* it sets out:

> *"2. REVIEW OF COVER GUARUNTEE*
>
> *. . .*
>
> *Prior to the tenth and then every fifth policy anniversary and annually after the life assured attains age 70, we will review the level of cover applying to this policy, taking into account the levels of premium payable, the then current value of units allocated to the policy and any other factor we consider relevant.*
>
> *If, on review of the policy, it appears to us that the level of cover cannot be maintained at the level applicable immediately before the review until the next review:*
>
> *(i) we will notify you of the new level of cover to be applicable from the policy anniversary following the revie until the next review,*
> *(ii) we will notify you of the revised level of premiums which would be required to restore the former level of cover until the next review date,*
> *(iii) you may restore the former level of cover by exercising Option 5 (Additional Policy – Cover Maintenance on Review) before the policy anniversary following the review,*
> *(iv) the relative proportions between any critical cover, combined death cover or death cover will be maintained in setting the reduced level of cover (if any) to be applicable under this policy."*

And at Section 8 – Options:

Option 2 – Additional Policy – Inflation:

> *"This option allows the value of your cover to be maintained in line with inflation, subject to certain conditions and exclusions.*

. . . on each policy anniversary you may effect an additional Self Assurance Lifetime policy without evidence of health and subject to:

(a) the critical cover and/or combined cover and/or death cover (whichever appear in the policy schedule) for the additional policy not exceeding the sum obtained by applying the percentage increase in the United Kingdom Government's Retail Price Index (or such other index as the actuary shall determine) over the last twelve months for which the figures are available at the time we calculate the cover to be available under the additional policy . . .
(b) the premium for such an additional policy shall be calculated by us according to out then current practice as appropriate to the then age of the life assured . . ."

Option 5 – Additional Policy – Cover Maintenance on Review:

"Where the level of cover we can guarantee to the next review date is to be reduced, this option allows you to maintain your previous level of cover without further medical evidence.

. . . you may, before the next policy anniversary, choose to effect without evidence of health a further Self Assurance Lifetime policy to restore the former amount of cover, having its commencement date on the same date as the next policy anniversary of this policy.

The premium to be paid under the further policy, shall be that appropriate to the age of the life assured on the commencement date of the further policy"

On 15 August 2013 Phoenix Life provided some information Mrs O had requested – her policy summaries, an investment statement and a copy of the policy provisions booklet. At the time she had 17 policies and was paying around £247.73 per month the SAL had a sum assured of around £303,000.

In 2014 Mrs O has said she cancelled some of the policies as the total premium had become unaffordable, reducing the sum assured to around £218,000.

In October 2018 Phoenix Life let Mrs O know they were making some changes to her policies. Instead of separate reviews they linked her policies under one portfolio number and provided one review of them all. At this time Mrs O had benefits in the sum of £219,129 and was paying a monthly premium of £288.04.

In June 2019 Phoenix Life sent Mrs O a combined review of her portfolio, this set out that the sum assured was unable to be supported at the current premiums paid until the next review date in 2024. She was given two options, (A) reduce the sum assured and critical illness cover, or (B) take out an additional policy to cover the shortfall for a monthly premium of £238.45. Mrs O selected option B.

I have been provided with a list of Mrs O's plans, it appears that a new policy was taken out on each anniversary of the original policy, to keep the sum assured in line with inflation. And then policy reviews began for each plan around their tenth anniversaries and then every five years after.

Mrs O raised a complaint as she was unhappy with the outcome of the 2019 review, in summary she said:

- She was not made aware that premiums would increase to unaffordable levels which would likely lead to the policy being cancelled due to affordability.
- The policy was sold and marketed without transparency.
- She took the policy out to provide for her children upon her death, had she known the premiums would increase as they have done, she wouldn't have taken out the policy.
- Mrs O asked what had happened to all the funds which had been paid over the years.

To resolve the complaint Mrs O said she would like:

- Phoenix Life to stop increasing the premiums, or
- Refund all premiums paid, or
- Offer financial support to maintain the increased level of premium.

Phoenix Life provided their final response letter on 2 March 2022. They didn't uphold Mrs O's complaint, in summary, they said:

- They had adhered to the terms and conditions of the policy, which provides for reviews to be carried out.
- During the reviews Phoenix Life carry out a calculation to check the premium being paid can support the sum assured.
- Mrs O's adviser should have explained how the policy worked when it was taken out, which included that it was a reviewable policy.
- The policy was taken out on a maximum basis, which means that most of the premiums are used to purchase the protection benefits with little invested. It is not designed to acquire a high surrender value.
- Assumptions made about future investment growth and price inflation are a lot different now than was assumed when the original policy and cost of benefits were calculated. As a policyholder ages the cost of benefits increases.
- The investment fund selected was more volatile than a general deposit fund.
- The premiums were guaranteed until the next review date but couldn't be guaranteed after.

Unhappy with the response Mrs O referred her complaint to this service. An Investigator reviewed it, they didn't uphold it. In summary the Investigator concluded that Phoenix Life ought to have provided Mrs O with clear information about the likely changes needed to the policy in order to sustain it, which they hadn't. And Phoenix Life didn't explain other options which may have been available to her.

However, Mrs O had explained to this service that she didn't want to decrease the sum assured or surrender the policy as she felt like that would be a waste of all the premiums she had already paid. And she said the sum assured was there to provide for her family in the future. As such, the Investigator didn't think Mrs O would have done anything differently had Phoenix Life provided her with clear information at the 2019 review.

Mrs O didn't agree with the Investigator's assessment and asked for an Ombudsman to consider her complaint. I issued my provisional decision. Mrs O let me know she didn't agree with it. Phoenix Life had no further comments.

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 Mrs O, but having done so I'm not upholding her complaint, the reasoning is in line with my provisional decision which has largely been repeated below. Whilst I have considered everything that has been provided to this service, I don't intend on commenting on each item. Instead, I will focus on what I have determined are the key aspects of the complaint.

Mrs O has made some points which refer to the sale of this policy. I'm not able to comment on whether or not this policy was adequately sold to Mrs O because I can only consider the actions of Phoenix Life. Phoenix Life are not responsible for the sale of the policy.

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 Mrs O has made about her policy is that she is unhappy that the cost of her life cover has increased significantly.

Mrs O mentions having had other life products in the past where the premiums have not changed over time. There are several different assurance and insurance products available to consumers, depending on their needs. Some life products can be taken out on a fixed term with fixed premiums for a set period of time, for example. I can only consider the product that Mrs O has complained about, against its terms and conditions. The policy Mrs O has complained about is a reviewable whole of life policy (RWOL).

Mrs O has asked where the premiums she has been paying over the years have gone as the surrender value of the policy is very small.

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. Mrs O's policy was taken out on a maximum basis. That means that most of the premium being paid was to cover the cost of the life cover and charges, and so only a small amount would be invested.

So, most of the premiums that Mrs O has paid over the years have paid for the life cover she has had for that period. Had one of the lives assured passed away, or there been a trigger for the critical illness benefit during that time, the RWOL policies would have paid the sum assured. Only a small portion of the premiums were invested.

Generally, at the start, when the cost of life cover is lower, more of the premiums are invested. 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.

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 Mrs O 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 O 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 of Mrs O's portfolio. I've not been provided with all the reviews carried out over the years for each policy.

It appears that initially on each annual anniversary of the original policy a new policy was taken out to increase the original benefit amount of £200,000 in line with inflation.

By 2019 Mrs O's original sum assured had reduced to a sum assured and critical illness benefit of £60,397. So, at some point before 2019 the original premium was not enough to maintain the £200,000 benefits – the 'tipping point' for that plan. It has been difficult to pinpoint exactly when that point was due to the number of policies Mrs O has, and the information that has been provided to me.

In August 2010 the first policy that was taken out to maintain the benefits of the original plan (plan 602), in line with inflation, failed a review. This indicates that by this point it's likely the original premium was not maintaining the benefits of the policy. At this point Mrs O decided to take out a further policy to cover the short fall in benefits, rather than reduce the sum assured.

Based on everything I have been provided with I am satisfied that at some point prior to August 2010 Mrs O's portfolio reached the tipping point.

I've considered the review letters that have been provided to me from 2010 to 2015. These provided Mrs O with the current sum insured and monthly premiums. No surrender value, the costs of the life cover were not noted, there was no clear explanation that the costs were no longer being met by the premiums being paid. And no explanation about the outcomes a consumer may face as the policy progressed, or a clear explanation of the options available to Mrs O to mitigate the long-term outcome. And so, I can't agree that Phoenix Life provided Mrs O with clear, fair and not misleading information within 12 months of the tipping point in August 2010.

What would Mrs O have done differently?

I've considered what, if anything, Mrs O 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, the options open to her would have been:

- Cash in the policy at the cash in value.
- Reduce the benefits.
- Increase the premiums (by taking out further policies) to maintain the level of the sum assured.

As a resolution to this complaint Mrs O has asked for Phoenix to maintain the current level of premiums, assist her to meet any increases or refund all of the premiums she has paid. However, none of these options would ever have been available to her.

Mrs O has been clear in her testimony to this service that she wanted the benefit of the portfolio. The cash in value of the portfolio in 2010 was around £190. Mrs O has said that she took out this policy to protect her family. She explained that she had maintained the premiums through hardship to maintain the cover for her family. Mrs O explained that cancelling the portfolio would feel like she had lost the monies that had already been paid in premiums. I don't think the £190 cash in value would have been enough of an incentive for her to have cancelled the portfolio. So, had Phoenix Life provided clear and not misleading information to her within 12 months of 2010 I don't think she would have cashed it in.

Mrs O was increasing the overall premium she was paying to maintain the sum assured. Until 2014 when she said the increase was not affordable and reduced the number of policies she held. I think, based on the above testimony that this is still what Mrs O would have done. As she wanted to maintain the cover I think it's most likely she would have continued to maintain an affordable level of premiums and selected when to allow the benefits to reduce at each review. So, had she been provided with the information I would have expected Phoenix Life to have provided her with I don't think she would have done anything differently.

Summary

Mrs O has a RWOL policy with Phoenix Life, that means that it is reviewable. The terms of the policy allow Phoenix Life to review it at intervals. When the premiums are not meeting the costs of the benefits of the policy Phoenix Life should offer Mrs O several options which is accompanied by clear and not misleading information to assist her in making a decision about what to do.

I appreciate Mrs O has listed some options on how she would like things to be resolved. But, none of those options would have ever been available to her. She would always have needed to decide between cashing in the policy or making changes to it.

Phoenix Life didn't provide Mrs O with all the information I would have expected them to. But, had they done so I think Mrs O would have still done as she did do – take out additional policies to maintain the benefits.

I appreciate this will come as a disappointment to Mrs O, but I'm not upholding her complaint about Phoenix Life.

My final decision

I don't uphold Mrs O's complaint about Phoenix Life Limited.

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

Cassie Lauder
Ombudsman