

The complaint

Mr and Mrs H complain about how Phoenix Life CA Limited (Phoenix) sold Mrs H a reviewable whole of life (RWOL) policy and the reduction it since carried out to the sum assured on this policy.

Mrs H settled this policy in trust (the trust), with both Mr and Mrs H (the trustees) being trustees of the trust.

What happened

Mrs H was advised by a firm, which Phoenix since took over, to take out a RWOL policy around April 1991. For ease I'll refer to Phoenix when referring to any firms that have been involved in this arrangement which Phoenix is now responsible for.

The recommended policy provided an initial sum assured of £100,000 in return for a monthly premium of £25.70. Indexation applied to this policy which meant the sum assured and premium would increase aiming to keep those values in line with inflation. It was arranged on a "maximum" cover basis which provided a higher level of cover for a lower premium, investing a lower proportion. The policy was placed in trust for four named beneficiaries with Mr and Mrs H being the trustees of it.

Over the years the indexation feature of the policy meant her premiums had around 2021 increased to £52.35 for a sum assured of £209,974.27. However when Phoenix wrote to Mrs H following a review of the trust's policy in April 2021, it told that her sum assured had fallen to £18,467.00, although that appears to have later increased to £25,071, for the same premium of £52.35. And that if she wanted to maintain her level of cover then her premium would need to increase to £621 each month. Given the significant changes being proposed to her policy Mrs H complained to Phoenix about how this policy had been administered and sold by Phoenix.

Her complaint was that:

- The policy had been mis-sold to her – the risks, affordability, impact of the investment element and how it worked hadn't been explained to her.
- She should've been advised something simpler.
- The benefits of the policy had fallen unfairly.
- The implications of taking cash from the policy hadn't been explained.

Phoenix considered the complaint and upheld it in part offering £150 for issues around how it communicated her review in 2022. It said:

- The policy was reviewed in 2021 and found it couldn't sustain itself, causing the sum assured to fall as it did.
- It noted the review letter for 2022 hadn't been issued due to a system issue. This still hadn't been resolved and would be sent once it had been.
- The policy had been fairly sold to her and was suitable for her circumstances at the time.

- It was reviewable in nature and had passed every review until 2022.

Mrs H remained dissatisfied with Phoenix's response to her complaint and asked our service to look into what happened further. One of our Investigators considered the matter and thought Phoenix needed to do more than it had already offered.

In his view the policy was sold fairly with the limited information available but that Phoenix ought to have been aware from 2017 that Mr and Mrs H would need to make significant changes to the trust's policy. As he thought Phoenix failed to sufficiently warn the trustees about those changes and that they likely would've taken action and surrendered the policy if the firm had done so. To resolve matters he proposed that Phoenix pay the trust the surrender value from 2017 with interest, on the basis the policy would end.

The trustees responded to our Investigator to provide further testimony about what was said during the sale, and that it would've been best to have been sold a policy with fixed benefits, such as term assurance. And that they felt exposed in their current position where finding replacement cover now would be unlikely. Phoenix didn't say whether it agreed or not with the conclusions reached.

Our Investigator considered the trustees' further submissions but didn't change his view on the complaint.

As an agreement was reached the complaint was passed to me to decide. I issued a provisional decision as I reached a different conclusion to how this complaint should be resolved to our Investigator.

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

This policy was sold before more specific rules came into effect about the "suitability" of advice being given when taking out such a policy.

When Phoenix sold Mrs H this policy it needed to ensure it was suitable for her. There is some information about how it was sold but not everything that I might want to see is available. Given the passage of time since this policy was sold, around 30 years, it isn't unreasonable more information isn't available and it wouldn't be fair then for me to make any adverse inferences about the sale where that evidence isn't now available.

At the time of sale Mrs H was 27 years old and married with three financially dependent children. She was a partner in a family farming business and had an existing life endowment policy. The reason she was looking for cover was recorded as being that she wanted to increase the amount of life cover she had to provide for her family should she pass.

The adviser recommended a £100,000 RWOL policy for a monthly premium of £25.70, with Mrs H selecting to invest the leftover from her premium into an equity fund.

In my view based on the rules at the time, it wouldn't have been an unsuitable policy to recommend. I say this because it had the potential to

provide cover for life with flexibility over the proportion being invested, allowing Mrs H to make changes if her needs changed in the future as the policy allowed her to increase or decrease the focus between providing life cover or savings. From the information I have available I'm satisfied at the time life cover was important due to concerns about loss of earnings should Mrs H pass given the nature of her and her partner's self-employment and the need to leave a sum to support the family finances in the event of her passing.

It follows as the policy recommended met her needs and would've likely been affordable for her, I'm satisfied it's likely Phoenix fairly recommended it.

Alternative types of life cover may also have been suitable, such as non-reviewable whole of life and term assurance. But in the circumstances I'm satisfied the RWOL policy Phoenix recommended more closely met her objectives and needs. I say this because it could provide cover for life rather than a set period of time, which appears to have been more important to Mrs H, given she placed it in trust which would often be done for inheritance tax purposes, and provided access to the cash value of the plan, a feature Mrs H found useful when she withdrew from it in 2016. This policy could also likely provide a higher level of cover in the earlier years, and potentially into the future, at a lower price compared to a non-reviewable whole of life policy.

The trustees have raised that risk hadn't been discussed with her where this plan contained an investment element. I can't make any inferences from the absence of information about the discussion of risk given the passage of time. And overall, I'm satisfied where this policy was taken out primarily as life assurance, Mrs H would've been comfortable with taking some risk in order to achieve the growth required to support this policy over the long term. I note she could've but hasn't changed the fund the policy invested through which persuades me that was a risk she was willing to take in order to support her needs for this policy.

For those reasons, I'm satisfied Phoenix's recommendation that Mrs H take out the RWOL policy that she did was suitable.

Policy reviews

The type of policy Mrs H was advised to take out 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 of 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 provided a brochure from 1990, just before the policy was advised to Mrs H. I can't be sure if this document was in use or if it reflects

the full terms from when Mrs H took out this policy, it appears to be from April 1990. But even if it wasn't, I think it's likely indicative of the information given to Mrs H at the time.

Clause 11 of the "technical notes" section of this document explains after 10 years the policy would be reviewed and then at every five year interval to determine whether the policy can sustain itself on its current terms until the next review. In those reviews, if the firm doesn't think the policy will sustain itself then it will recommend an increased premium that would prevent the policy lapsing. The document clearly refers to the premium potentially changing in the future, but not the sum assured. But given the passage of time since the policy was taken out, I can't be sure there wasn't a more detailed policy terms document provided that might have explained this. I say this because the "technical notes" is only a page long whereas full policy terms documents that I've seen from around this time tend to be longer and more detailed.

In any event policies like these tend to include terms of variations or were otherwise updated. Here I don't think Phoenix would be acting against the trust's best interests if it had done so. I say this because reducing the sum assured would likely be a preferred option than the policy exhausting itself much more quickly without such an amendment. I also note that the 2005 review letter, the earliest Phoenix has been able to provide, does clearly state both the premium and sum assured are subject to change depending on the underlying performance of the policy. I note there is no record of the trustees questioning this, or in those sent in later years, so if Phoenix hadn't clearly presented the sum assured could change I don't think it's likely it would've prevented them from taking out the policy

Overall, I'm satisfied Phoenix had set out with sufficient clarity that the policy was reviewable in its nature. 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 the trust's circumstances the policy was reviewed more frequently than the policy brochure said it would be, at the least annually from 2005, although the 2022 review was carried out but not sent. It's unclear why it was reviewed more often than the guide said it would be but is perhaps due to the indexation of this policy, which would increase the premium and sum assured each year aiming to keep pace with inflation. But in any event the policy being reviewed more frequently in itself isn't to the trusts detriment, if anything where executed fairly it provides the earliest opportunities to make changes that will mitigate the extent of future changes.

As I mentioned already, Phoenix said each review passed until 2021 when the sum assured was first reduced. The review letter from 7 April 2021 explained the plan was being reviewed annually and that the firm had changed how it calculated whether these reviews would pass or fail, explaining it was now assessing that based on cover lasting for the whole or

life rather than just until the next review, which were being carried out annually.

Given the reviews were only taking a short term annual view, I don't think Phoenix provided the trustees with clear, fair and not misleading information about the future prospects of the policy. I've thought about then whether Phoenix ought to have known prior to the 2021 review that the policy would require significant change and to have communicated that to the trustees. In my view it's unclear when the policy reached the "tipping point", the moment the costs of the life cover exceeded the premiums paid. I say this because while Phoenix has provided spreadsheets it says shows the cost of providing the life cover and premiums, it doesn't present the life costs clearly and hasn't been able to provide a clear year by year breakdown. I've attempted to reconstruct that with the information provided, but where I only have the fund deductions to pay the charge and the monthly fee, I don't think I have all the relevant information about the costs deducted in providing the policy.

Regardless of my reservations about that information, I've seen a letter Phoenix sent Mrs H on 1 April 2016 following a query about her policy. This letter explains the workings of the policy and importantly that the cost of life cover had become more expensive than the premium. The review letters around this period as well look to support that statement where in the years prior the rate at which the units are added into the plan increase at a slower rate, followed by Mrs H's withdrawal by the 2017 review, after which the units fall.

Without clearer annual premium information, which Phoenix has already been asked for but not provided but I would invite it to review in response to this decision, I think it's likely then by 1 April 2016 the cost of life cover had at least on a monthly basis begun to exceed the premium. And by the 2017 review Phoenix would've known over a longer period of a year that position had become sustained shortfall which would be drawn from the investment element.

Around the 2017 review then was an important moment in the policy as this is when the difference between the premium and costs of life cover would now likely be paid from the investment element of the policy. This would be important information for the trustees to be able to make an informed decision at the earliest opportunity about what changes, if any, to make to the policy. The 2017 review letter did provide some notice that the policy on its current terms may only last around another eight years. But it didn't make clear the extent or significance of the changes that would be needed, and what it would cost based on the forecasted increases in the cost of providing life cover. This here would be particularly important given Mrs H had withdrawn £8,000 from the plan in the prior year.

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 the trustees would've needed to make significant changes to her policy in the future. There was then an imbalance of knowledge between Phoenix and the trustees, and around the time of the 2017 review I think Phoenix ought to have corrected that imbalance by providing clear warning to them about the extent of the changes that would likely be needed.

I've considered then what the trustees would've likely done had Phoenix presented clearer information and warning to them about the future prospects of the policy. Having done so, I think it's likely they would've surrendered the policy and sought alternative cover elsewhere. I say this because at this point they would've had a reasonable understanding that the policy would soon become unaffordable for them. Being presented with clear, fair and not misleading forecasts that the cost of life cover would increase to the point they would need to pay over ten times more in premiums in a few years' time, as is what happened, I think it's likely they would've no longer seen value in continuing with the policy. It had a cash value at the time of around £3,000 and I think they would've thought to encash the policy and looked to seek alternative cover, if available to them, or other savings vehicle to try to meet their needs, which was providing for their family should they pass away given the demands of running a farming business.

The trustees have said, through their representative, that they think term assurance would have been available at an affordable rate on similar terms to what their RWOL policy have been providing. Phoenix has explained a level term policy based on Mrs H's age in 2019 would cost around £180 per month. Given they told us they would've wanted to pay around a similar amount for a similar level of cover, I can't fairly say it's likely they would've been able to obtain equivalent cover within their budget for such cover based on her age in 2017. I think it's unlikely two less years in age would bring down the premium to an equivalent level the trustees were paying.

It follows then I intend to say had Phoenix provided clear information in the 2017 review, I think the most likely action is the trustees would've surrendered the policy. I'll set out below how I intend to direct Phoenix to resolve this matter.

Implications of withdrawing

Mrs H says Phoenix didn't properly set out the implications for her policy should she withdraw from it.

I've reviewed the product brochure from 1990 which does highlight withdrawals as a feature of the policy. On withdrawals, this document explains that after 10 years of paying premiums one-off withdrawals are possible, in particular "if the need for urgent cash arises, without having to surrender the whole policy". The "technical notes" section at clause 13 further explains that withdrawals come from the encashments of units, i.e. the investment pot. Any withdrawal then would have the effect of reducing the size of the amount that had been saved and could benefit from investment growth in the future that would be needed to offset the increased cost of life in the future, meaning the policy would require change sooner than it otherwise would.

I'm satisfied there was some discussion between Mrs H and Phoenix prior to her instruction to withdraw. I say this because a letter dated 1 April 2016 refers to such a call taking place and provides information about the policy, which includes the impact of withdrawals. In particular it says:

"Given that the cost of life cover currently exceeds the premiums paid, if a very high proportion of the plan funds were surrendered, the plan would be likely to fail its next annual review. If a balance of

£2,000 were left in the plan, then it seems likely that the plan would pass its next annual review, however, reducing the investment funds means that the date when the plan fails a review would be likely to occur sooner rather than later.”

After Phoenix had provided that information Mrs H signed her withdrawal request of £8,000, on 6 April 2016.

Given in my view Phoenix provided a fair and reasonable explanation about how withdrawing from her policy would impact it, I'm satisfied she made an informed decision about doing so having been made aware of the risks.

It follows I don't intend to make any direction to Phoenix about her withdrawal.

Putting things right

In compensating the trust, I intend to direct Phoenix to pay an amount to the trust that reflects:

- *The surrender value as it would've been at the 2017 review, and*
- *A refund of the premiums paid since the 2017 review, and*
- *8% simple interest to reflect the loss of use of those funds on:*
 - *The surrender value – from the 2017 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 since been paid to the trust or trustees.*
- *Separately to the above, as I think the £150 Phoenix has already offered in compensation fairly reflects the inconvenience caused, it should pay that amount if it has not already done so.*

The above is on the basis that the policy, if still in place, ends. By accepting the outcome of the complaint, this may affect the trust given that the policy will come to an end. Therefore, the trustees may wish to seek independent financial advice on the impact the outcome will have on individual circumstances and needs, in particular to their inheritance and inheritance tax planning as I can't to advise them on this matter. They may also want to discuss the outcome with the other trustees as we would need all trustees to agree to the outcome before the complaint could be resolved.

I would also note the firm has described the policy as being “paid up” since May 2024. Depending on the policy that can mean the current sum assured is guaranteed with no further premiums to be paid. The trustees should ensure they understand the impact Phoenix's categorisation has on their policy before accepting my outcome. Phoenix should in its response to my provisional decision provide a further explanation of the current status of the

policy and what it means by it being “paid up” so the trustees have all the information they need to decide whether to accept my decision.

By making this award my intention is to put the trust in the position it would've been in had the trustees cancelled the policy in 2017 and paid nothing further towards it. It would be fair and reasonable for me to award the refund of premiums since 2017 given acceptance of my decision would mean there would be no cover in place, and it isn't now likely possible to source replacement cover.”

Both parties responded to my provisional decision.

Aviva said it didn't necessarily disagree with the overall outcome reached but asked me to consider further submissions about the value of the policy to the trust and the merits of directing it to refund the surrender value with interest if alternative affordable cover was available as the trustee's representative has argued.

The trustees' representative disagreed with my provisional decision for several reasons. In summary those were:

- The policy was mis-sold and set up incorrectly
- I was incorrect to say the policy met her needs as a policy set up on a maximum basis would never last until the end of life, and the financial protection needs would only have been needed until Mrs H's dependents were no longer dependent.
- Disputing Phoenix's estimated replacement policy costs and provided quotes to show replacement cover would've been available and affordable.
- That interest should be compounded not on a “simple” basis.

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 reviewed the matter again, taking into account the further arguments both sides have presented, I've not seen to change the conclusions I reached in my provisional decision. I understand my outcome had been objected by both sides but in my view it remains a fair and reasonable way to resolve this complaint on the basis of what I think is mostly likely in the circumstances.

Matters relating to the sale

I've thought carefully about the points made in response about how this policy was sold, but they haven't persuaded me that it would've been an unsuitable recommendation, for the same reasons I set out in my provisional decision. The circumstances explained about Mrs H when the policy was taken out, a young family and business debts, would be the sort that would benefit from life cover. The maximum basis the policy was provided under would provide a high level of cover for a relatively low premium and did so on those terms for 30 years, which was likely the objective at the time with the potential for the policy to last for life to some extent depending on how it performs. I appreciate the frustration this policy can no longer provide the cover it could on its initial terms but as I explained in my provisional decision I'm satisfied the policy made no assurances, instead saying after 10 years changes could be required to the terms of cover. The changes that were needed in more recent years then don't on their own render the original advice unsuitable.

It may well be that term assurance could also have been suitable, but that doesn't mean this RWOL policy wasn't. Phoenix's responsibility when recommending life cover would've been to recommend cover that was suitable, not that was the most suitable. The product may not have performed as well as intended over time when comparing to what a term assurance policy could achieve in hindsight and may or may not have been more expensive in the end. But that doesn't persuade me at the time Phoenix's recommendation wasn't suitable when it likely met the settlor's needs, removed from the benefit of hindsight, and I don't have much else to say on how the policy was sold beyond what I've already explained in my provisional decision.

Matters relating to surrender/alternative cover

In my provisional decision I said I thought it likely the trustees would've surrendered the policy in 2017, my view on that and the reasons for it remain as I set out in that decision.

I've listened to arguments from both sides about what that means for this complaint, in response to my provisional decision that said the surrender value and premiums paid since should be refunded with interest.

The trustee's representative has provided quote information for term assurance policies they argue would provide around the same level of cover for around £10 a month more than what the trustee's had been paying, £52.35. This is opposed to Phoenix's quotation for a monthly premium of £180.

I've considered the evidence around the availability and cost of replacement cover. But having done so, I can't fairly say on that balance of probabilities what terms the trustees would've received for replacement cover. The quotes the trustee's representatives have provided are a useful indication, but they don't persuade me a particular policy was available and would've provided the level of cover required at a specific price.

In my view the most likely outcome is that the trust would've surrendered the policy, and I can't fairly determine that a cover would've likely been provide at a particular price or on what terms. I remain of the view that a fair outcome in this complaint is to make the award I set out in my provisional decision and confirmed below. As I'm not directing a replacement policy be sourced, it remains fair for me to award the funds the trust would've received and kept had the policy been surrendered at the 2017 review.

Putting things right

In compensating the trust, I direct to Phoenix to pay an amount to the trust that reflects:

- The surrender value as it would've been at the 2017 review, and
- A refund of the premiums paid since the 2017 review, and
- 8% simple interest to reflect the loss of use of those funds on:
 - The surrender value – from the 2017 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 since been paid to the trust or trustees.
- Separately to the above, as I think the £150 Phoenix has already offered in compensation fairly reflects the inconvenience caused, it should pay that amount if it has not already done so.

The above is on the basis that the policy, if still in place, ends. By accepting the outcome of the complaint, this may affect the trust given that the policy will come to an end. Therefore, the trustees may wish to seek independent financial advice on the impact the outcome will have on individual circumstances and needs, in particular to their inheritance and inheritance tax planning as I can't to advise them on this matter. They may also want to discuss the outcome with the other trustees as we would need all trustees to agree to the outcome before the complaint could be resolved.

I've considered but don't agree with the trustee's representative that I should apply a different basis of interest. I say this because the award I've made of simple interest is to compensate for deprivation of use of those funds, not to reflect what might have happened if it was invested or used in a similar manner. I'm satisfied the use of simple interest fits the circumstance and reason I make this award.

I would also note the firm has described the policy as being "paid up" since May 2024. Depending on the policy that can mean the current sum assured is guaranteed with no further premiums to be paid. The trustees should ensure they understand the impact Phoenix's categorisation has on their policy before accepting my outcome.

By making this award my intention is to put the trust in the position it would've been in had the trustees cancelled the policy in 2017 and paid nothing further towards it. It would be fair and reasonable for me to award the refund of premiums since 2017 given acceptance of my decision would mean there would be no cover in place, and it may be difficult to source replacement cover, although there is potential to use the award to offset the cost of new cover should the trust look to do so.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H and Mr H as trustees of the D Trust to accept or reject my decision before 16 March 2026.

Ken Roberts
Ombudsman