

complaint

Mr and Mrs R complain they were mis-sold a decreasing term assurance policy by Phoenix Life Assurance Limited.

They say:

- They were advised the policy was a condition of their mortgage.
- No alternatives were discussed.
- Because they had a holiday home worth £50,000, the policy wasn't required.

background

Mr and Mrs R were recommended a joint decreasing term assurance policy in 1998, in respect of a repayment mortgage in the sum of £40,000 over a 12 year term.

At the time Mr R was in his early fifties and Mrs R was in her mid-forties. They were married and had two financially dependent children. They were both in permanent employment.

In 2007 they cancelled the policy after they say they became aware the policy was optional.

One of our adjudicators investigated Mr and Mrs R's complaint and recommended that it shouldn't be upheld. In short the adjudicator found:

- Given the length of time that has passed, the business was only able to provide limited documentation. That in itself wasn't a reason not to uphold the complaint.
- The policy was suitable for Mr and Mrs R's circumstances.
- There was no evidence to suggest the policy was compulsory.
- The policy wasn't assigned to the lender. If it was a condition, he'd expect it to have been assigned.
- There was no evidence to persuade him they weren't able to look elsewhere.
- Their holiday home wasn't guaranteed throughout the mortgage term and having this sort of cover preserves more of the estate for beneficiaries.

Mr and Mrs R disagreed with the adjudicator's conclusion. They maintain they were told their mortgage wouldn't be granted unless they took out the policy. They weren't disputing the policy wasn't suitable, but simply that they weren't advised it wasn't option or that they could get cover elsewhere. They feel the bank withheld vital information from them.

my findings

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

I've also considered all of Mr and Mrs R's additional submissions carefully. Having done so, I agree with the adjudicator's conclusion and for much the same reasons. I'm not going to uphold this complaint.

On balance, I'm unable to safely conclude Mr and Mrs R were advised the policy was a condition of the mortgage, without which they were unable to obtain the mortgage.

Due to the passage of time Phoenix Life has only been able to provide limited documentation. I'm mindful businesses aren't required to keep information indefinitely and generally not required to retain documentation beyond six years.

My role is to consider the evidence presented by Mr and Mrs R and Phoenix Life and reach what I think is an independent, fair and reasonable decision based on the facts of the case. And it's for me to decide, based on this information to decide what's more likely than not to have happened.

Phoenix Life has confirmed this policy wasn't a condition of the mortgage and Mr and Mrs R were free to take cover elsewhere.

It's unfortunate that there isn't now documentation available that specifically points to the fact that this policy was optional. However, I've not seen evidence that the policy was a condition of the mortgage either, and they couldn't go elsewhere for cover.

I note this policy didn't start at the same time as the mortgage, but roughly two months later. If the policy had been a condition of the mortgage, it's highly unlikely the business would have released the mortgage funds until the life cover was in place.

I also note the policy wasn't assigned to a lender. Taken together with the other points, it suggests the policy wasn't a condition of the mortgage.

The recommendation was also suitable for protecting Mr and Mrs R's borrowing, because the policy matched the term and value of the loan. I appreciate Mr and Mrs R don't take point with the issue of suitability but simply with it being recommended as condition of the mortgage. But the issue of suitability is relevant to my overall consideration of the sale of the policy and in deciding what's more likely than not to have happened.

In this instance, the level of benefit would reduce in line with the loan until the end of term. Because this was a joint policy, in the event of death of either Mr or Mrs R, during the term of the policy, the mortgage would have been paid off.

I appreciate Mr and Mrs R say Phoenix Life should have taken account their holiday home worth roughly over £50,000. However, this wasn't a suitable replacement for life cover in the way envisaged by Mr and Mrs R. The holiday home wasn't guaranteed for the duration of the borrowing, whereas the policy would continue to run so long as the premiums were paid.

This type of policy was designed to remove the necessity of the survivor to rely upon other sources to repay borrowing and to ensure the retention of the family home. I'm therefore satisfied that in the circumstances a decreasing term assurance policy in respect of a repayment mortgage was a suitable recommendation.

Even if Phoenix Life recommended Mr and Mrs R take out the cover, and did so strongly, I don't think it renders the policy mis-sold. I don't think it was unreasonable for Phoenix Life to want to protect its financial interest by recommending a policy protecting the loan in the event of death.

In light of the above points (taken together), I'm afraid I'm unable to safely conclude Mr and Mrs R were advised this policy was a condition of the borrowing and that they couldn't go elsewhere.

my final decision

For the reasons above, I don't uphold this complaint or make an award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs R to accept or reject my decision before 11 April 2016.

Dara Islam
ombudsman