

## **complaint**

Mr S' representative complains on his behalf that he was mis-sold a reviewable whole-of-life policy by Phoenix Life Limited for the following reasons:

- he wasn't made aware of the reviewable nature of the policy
- the policy wasn't suitable for his circumstances at the time of sale
- the adviser didn't establish Mr S' attitude to risk when making the recommendation

## **background**

The adjudicator who considered the matter didn't recommend that the complaint should be upheld. She felt that the documentation made it clear there would be reviews and that, to maintain the initial level of cover, a higher premium might be required or the sum assured would need to be reduced.

The adjudicator also noted that the business had written to Mr S since 2002 informing him of the outcome of the policy reviews. In response, Mr S had signed and returned the reply forms in 2007, 2008, 2010 and 2012.

Mr S' representative didn't accept the adjudicator's assessment. It said the reviews were such an important feature of the plan that they should have been brought to Mr S' attention. But this didn't happen – the reviews weren't explained anywhere. The representative also didn't agree that the policy was suitable for Mr S' circumstances at the time of sale. Mr S had teenage children so it was queried as to why a whole of life plan was suitable. If Mr S had wanted to cover his children, a term assurance plan would have been more suitable.

If the cover was required indefinitely, the plan had failed in any case due to the required increases in premiums, the representative said. It was further commented that Mr S' attitude to risk for this plan hadn't been established.

As agreement's not been reached on the matter, it's been referred to me for review.

## **my findings**

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

To firstly address the matter of the policy's suitability for Mr S and his family, I've noted the concerns expressed when Mr S referred his complaint to us about the reducing value of his cover and how this might affect his family if he were to die. It's also been requested that he be paid a refund of the premiums so he can seek cover elsewhere. I don't think it's therefore likely that Mr S wanted a term assurance policy for any particular length of time. In 1992, his youngest child would probably have been financially dependent for a further six or seven years, but the policy has been in place for significantly longer than that. So it doesn't seem that it was set up to provide cover for the duration of their financial dependence.

I therefore think it's likely Mr S wanted a whole of life policy. I must then determine whether he was provided with sufficient information to be able to realise that the policy was reviewable and that his premiums might increase in the future. In doing so, I'd say that the requirements in 1992 were somewhat different to those now in place. For example, there

was at that point no requirement for a letter of recommendation. But I'd nevertheless expect there to be evidence on the file that the policy reviews were disclosed to Mr S.

Having reviewed the point of sale documentation, I can see that the reviews were set out in the policy terms. I also note that the policy illustration stated that the "initial contribution" for a sum assured of £174,435 would be £100. In a separate letter to Mr S reminding him of the option to change his mind about the policy, the following was set out under the heading "Points to consider":

*"Before you decide whether you want to change your mind, ask yourself:*

*Are you satisfied that the investment is suitable for your needs?*

*Do you, for example:*

- *Understand how much you will have to pay now and in the future?*
- *Understand what benefits will be paid under the contract, on your death or before you die, and to what extent these benefits are guaranteed and to what extent they depend on bonuses or on the changing values of the assets to which they are linked?"*

And so whilst I acknowledge Mr S' comments that he didn't understand the nature of the contract, I do think he had the opportunity to find this out if he was in any doubt. I must also take account of the fact that Mr S has on several occasions confirmed that he didn't want to increase the premium to maintain the sum assured at review points during the policy's history. I appreciate that it might have been the amount by which the premium needed to increase or the sum assured would be reduced which finally led him to complain in 2014. But I do think it's likely that, if Mr S hadn't in fact been aware of its reviewable nature, he would have raised this sooner.

As to the level of risk which this represented, I accept that even if Mr S was categorised as having a balanced risk for investments, this may not have been the case for his attitude towards family protection. But this then also brings me to the issue of the possible alternatives for Mr S if indeed he didn't want a reviewable policy. It's already been established that a term assurance policy wasn't what he wanted. But a non-reviewable policy is likely to have been significantly more expensive and, as previously noted, Mr S was unwilling to increase the premiums when the policy was later reviewed.

I think it's unlikely therefore that Mr S would have been willing or able to afford the premiums for a non-reviewable policy for the amount of cover he sought. The options were therefore to accept a much reduced sum assured or take a balanced level of risk which might sustain the sum assured indefinitely. Given Mr S' attitude to risk for investment and the other alternatives, I think it's entirely plausible he would have accepted the reviewable policy.

### **my final decision**

I realise Mr S will be disappointed with this outcome, but my decision is that I don't uphold the complaint.

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

Philip Miller  
**ombudsman**