

The complaint

Mr P and Mrs P complain that Phoenix Life Limited mis-sold a whole of life policy with critical illness cover resulting in them paying for life cover twice.

What happened

In 1989, Phoenix recommended to Mr P and Mrs P a whole of life policy that included critical illness and life cover. Mr P and Mrs P, represented by a claims management company ('CMC'), complained to Phoenix that the policy had been mis-sold. Phoenix accepts it should have made Mr P and Mrs P aware that critical illness could be provided through other providers on a stand-alone basis and made an offer that Mr P and Mrs P partially accepted.

Mr P and Mrs P accepted Phoenix's offer to refund the difference in cost of the premiums paid on part of the policy (0809099G), against the premiums that would have applied had they taken life and critical illness over 31 years. However, Mr P and Mrs P rejected the offer Phoenix made on part of the policy (0809098K). Phoenix thought a fixed term of 31 years was appropriate for this part of policy too because critical illness cover would have been required until Mr P retired. The compensation offered by Phoenix was less than the surrender value so there was no financial loss on this part of the policy.

The CMC brought the complaint to the Financial Ombudsman Service. One of our Investigators looked into things and thought the offer made by Phoenix in relation to the second part of the policy was a fair and reasonable one in the circumstances. The CMC asked that an Ombudsman decides the complaint.

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.

The Personal Financial Analysis ('PFA') document Phoenix and Mr P and Mrs P completed in 1989 isn't as clear as it could have been. In making my decision I've taken into account the recollections of Mr P and Mrs P, the information I can see within the PFA and the supporting comments provided by the CMC representing Mr P and Mr P. I understand Mr P and Mrs P will be disappointed, but I've decided that the offers Phoenix made in respect of the mis-sale of the policy are fair and reasonable. I will now explain why.

When Phoenix recommended the reviewable whole of life policy to Mr P and Mrs P in 1989, it was rare for critical illness cover to be available as a standalone policy. Standalone critical illness policies only became widely available in the latter half of 1989 and tended to be more expensive than if life cover was also included. Phoenix accepts it should have made Mr P and Mrs P aware of this but feels the need for life cover and critical illness cover extended to Mr P's retirement age. Mr P and Mrs P believe they only needed the cover until their children were no longer dependent. As Mr P and Mrs P have already accepted the offer on the other part of the policy (0809099G), this is the crux of the complaint I've been asked to decide.

The PFA records Mr P was self-employed, Mrs P was employed, and their retirement ages

were 65 and 60, respectively. Mr P and Mrs P had children who were likely to become non-dependent in or around 2003. Mr P and Mrs P had no savings in place for any short-term needs and it wasn't clear whether they had made any provision for long-term savings.

I've carefully considered comments from the CMC that the cornerstone of any financial planning is to have an emergency fund in place. This doesn't take into account that at the time Mr P and Mrs P had no family protection in place – no life cover or critical illness cover. I acknowledge the additional comments provided by the CMC, but I'm persuaded it was reasonable for Phoenix to recommend that life and critical illness cover was suitable at the time of the sale, particularly as there was a need agreed for such cover.

When Phoenix attempted to put Mr P and Mrs P back into the position they should have been in – or at least as close as possible - it used a 31-year term to compare the cost of a term cover policy against the cost of the whole of life policy with critical illness it provided. With the benefit of hindsight, it's possible to make a case for the level of cover provided to be fixed to the date Mr P and Mrs P's children were no longer dependent. But, in this case, there's no dispute Mr P was self-employed at the time of the advice. This persuades me that at the time of the sale, the need for life and critical illness cover would more likely than not extend past 13 -years, particularly as there was no other protection in place for Mr P such as pensions or long-term savings.

The CMC says that if Phoenix had discussed the option of term cover over a shorter-term it's likely Mr P and Mrs P would have been in a position to make regular savings. The CMC says this could have been used to help create an emergency fund or even contribute to their retirement planning. I think it's too speculative for me to conclude this is what is likely to have happened. Of course, Mr P and Mrs P's priorities may have changed over the years, but at the time of the sale it wasn't unreasonable for Phoenix to conclude any critical illness cover would be required until Mr P's retirement. And because of this, I don't think it's unreasonable that Phoenix calculated the compensation amount based on a fixed 31-year term assurance policy.

My final decision

For the reasons above, I've decided that as there was no financial loss when Phoenix Life Limited calculated the redress on policy 0809098K, it doesn't need to do anything else.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P and Mrs P to accept or reject my decision before 5 August 2024.

Paul Lawton
Ombudsman