

The complaint

Mr E says Phoenix Life Limited (Phoenix) failed to honour the life assurance cover provided with his personal pension plan in relation to terminal illness benefit. He says even if his policy didn't include such cover, Phoenix should've made that clear to him in 2018 when it provided him with information about a potential replacement policy. He's concerned about the financial position of his wife on his passing.

Mr E is represented by his independent financial adviser (IFA).

What happened

I'm sorry Mr E and his family are in a very sad and difficult situation.

Mr E was diagnosed with a serious health condition in November 2019 and given a prognosis of limited life expectancy in December 2021. He'd had life assurance benefit linked to his personal pension policy held with Phoenix. But this had expired on 8 May 2022 when he reached 65.

Mr E disclosed his health situation to his IFA in November 2022. His IFA made him aware that he might be eligible to make a claim on the life assurance benefit linked to his personal pension policy.

Mr E tried to make a retrospective claim on his life assurance cover for terminal illness benefit. Phoenix considered Mr E's claim but rejected it. It said his policy hadn't included terminal illness cover.

Mr E wasn't satisfied with Phoenix's response. As well as challenging the coverage of his policy, he also raised the interaction he'd had with it in 2018 when he was considering switching his pension benefits. He says he was informed about a replacement life assurance policy available which was 'like-for-like'. This had terminal illness cover. He didn't take out the new cover but says if he'd known his existing policy didn't provide terminal illness benefit he'd have bought the replacement policy.

An Investigator considered Mr E's case but didn't uphold it. On reviewing the terms and conditions of his personal pension plan and life assurance policy, he didn't find it provided for terminal illness cover. He also considered Mr E's decision in 2018 not to switch his personal pension was mainly influenced by his decision to maximise his pension income.

Mr E disagreed with the Investigator's view and so his case has been passed to me to review afresh and to provide a decision.

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.

Where there's conflicting information about the events complained about and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what's most likely to have happened.

I've not provided a detailed response to all the points raised in this case. That's deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I've taken into account all submissions, I've concentrated my findings on what I think is relevant and at the heart of this complaint.

I'm not upholding Mr E's complaint. I'll explain why.

The first thing I've considered is the extensive regulation around transactions like those performed by Phoenix for Mr E. The FCA Handbook contains eleven Principles for businesses, which it says are fundamental obligations firms must adhere to (PRIN 1.1.2 G in the FCA Handbook). These include:

- Principle 6, which requires a firm to pay due regard to the interests of its customers.
- Principle 7, which requires a firm to pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

So, the Principles are relevant and form part of the regulatory framework that existed at the relevant time. They must always be complied with by regulated firms. As such, I need to have regard to them in deciding Mr E's complaint.

The first thing I reviewed were the terms and conditions associated with the life assurance cover Mr E had taken out in 1989. This documentation has been shared with him and his representative. Like the Investigator I've concluded his policy didn't provide for terminal illness benefits.

Mr E's case then turns on what happened in 2018. In responding to the Investigator's view, his IFA said:

"In 2018, a series of communications took place between [Mr E], [Phoenix]...and [his IFA] ...to understand the options he had on his pension. Mr E ideally wanted to transfer his policy away, but a decision was made to retain the policy so that he would not lose out on a bonus payable at retirement."

"This decision was made following a series of letters and phone calls with the provider in which they provided incorrect guidance about the minimum contribution required to maintain his bonus, and in order to retain his valuable life assurance benefit."

"...given the language Phoenix Life used when describing a 'like-for-like' policy both in writing and in telephone clarification it seemed unnecessary to take up the option of [a replacement life assurance policy] given this would provide identical cover..."

"Mr E is infuriated at the suggestion that he would have knowingly made a choice to forego the chance to upgrade his cover to include terminal illness benefit for no additional cost or underwriting, particularly as his medical history includes a heart attack which pre-dates 2018. He feels that if this opportunity was clearly highlighted then this alone would have been enough motivation to transfer out of the scheme, regardless of any loss of the bonus payable at retirement..."

I've reviewed Phoenix's communications with Mr E in 2018. For example, the quote it provided for a replacement policy said:

“As advised in our retirement letters, your pension plan cannot be used to continue your life assurance cover. This cover must cease at your normal retirement age or following payment of your pension benefits by way of Annuity, Commutation, Open Market Option or Transfer if taken earlier.”

“However, you have the option of applying to continue the same life assurance cover for the same premium under a new Fixed Term Security Plan (FTSP). If you decide to apply for this new FTSP you will not need to provide any further medical evidence.”

Mr E feels Phoenix was proposing a ‘like-for-like’ offer on life assurance. And so it was reasonable for him to assume his then existing cover already included everything that was in the FTSP. While I understand the point he makes, arguably it would’ve been prudent to have made a full comparison. There will have been considerable developments in financial product offerings over 30 years.

FTSP was a new policy. It provided the same life assurance cover as his existing policy for the same price and for the same period. It also offered Mr E the opportunity to enhance his cover compared to his then existing policy, through the addition at no charge of terminal illness benefit.

Phoenix wasn’t providing Mr E with advice. It was providing him with information. Even if I accepted that it should’ve drawn his attention to the differences between his existing policy and what he could’ve bought to replace it, the question I need to consider is had he and/or his IFA understood the differences, would it have impacted on his decision making?

In deciding a complaint I need to avoid the benefit of hindsight. I recognise Mr E had pre-existing medical conditions in 2018 and that life assurance was important to him. But I’m mindful it wasn’t until the end of 2019 he received a diagnosis for his condition and not until the end of 2021 that he was advised his life expectancy was less than 12 months.

I have to make judgements based on the balance of probabilities. And, based on the information I’ve seen, I’ve concluded that in 2018 it’s more likely than not Mr E’s priority was maximising his pension pot. I’m not persuaded the offer of an enhanced life assurance policy would’ve altered the decisions he made about his pension and cover at that time.

My final decision

For the reasons I’ve set out, I’m not upholding Mr E’s complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr E to accept or reject my decision before 1 September 2023.

Kevin Williamson

Ombudsman