

The complaint

Mr C complains he was mis-sold a mortgage protection life cover plan (the plan) by Phoenix Life Assurance Limited as he didn't need the plan and it wasn't affordable.

What happened

Mr C took out the plan in November 2000 for a term of 25 years to cover a mortgage he was taking out. The initial sum assured was £39,546 and the premium was £8.71 each month but the plan is a decreasing term assurance so the amount of life cover has reduced each year. He has maintained the premium payments throughout.

Mr C complained to Phoenix in December 2022 on the basis that he didn't need the plan as he had death in service benefits. It didn't uphold the complaint, saying that based on the information provided in the fact find completed at the time of sale in 2000 the plan was suitable for his life cover needs and was affordable. It explained that the death in service benefits Mr C had would end with his employment and that many mortgage lenders didn't accept this as suitable life cover for a mortgage.

Mr C referred the complaint to our service and it was considered by one of our investigators. He didn't think the complaint should be upheld and in short, said that Mr C's death in service benefit wasn't guaranteed to stay the same, as employers can change benefits or he could have changed employers. The investigator also said he hadn't seen evidence that the plan was unaffordable or that Mr C didn't want it, pointing that he could have cancelled it at any time if he wanted to.

Mr C didn't agree with the investigator. He repeated his argument that at the time he was advised to take out the plan he already had adequate cover both to repay his debts and leave a cash lump sum for his children. He said that if this had changed in the future through his employer changing the death in service benefit or him changing jobs he would have reassessed his circumstances at that time.

Mr C disagreed that the plan was affordable just because he maintained the payments. He said that he was in due course ordered to pay child support which took him close to or above his monthly budget. Mr C also said he felt pressured to take out the plan because he was led to believe not having cover would disadvantage him in getting the mortgage.

As Mr C didn't agree with the opinion of the investigator the matter has been referred to me for review.

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.

My role is to determine this complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case based on the information provided by the parties and taking into account relevant: law and regulations; regulator's rules, guidance and

standards; codes of practice; good industry practice at the time - where I consider it appropriate to do so. My findings of fact are made on a balance of probabilities – what is more likely than not – and it is for me to decide how much weight to give to evidence provided by the parties.

Having considered the available evidence I am not persuaded that it should be upheld for reasons I explain further below.

The general position when it comes to mortgage protection is that it is sensible to protect a mortgage by taking out life cover. The basis for Mr C's saying that it wasn't a suitable recommendation in his case comes down to him being entitled, at the time of advice, to a lump sum death in service benefit from his employer - which was enough to repay his mortgage and other debts and still provide a lump sum to his two children.

Phoenix said in its response to the complaint that death in service benefits weren't accepted as suitable life cover for a mortgage by many mortgage providers. This would be relevant if it was a condition of Mr C's mortgage that he take out life cover to protect his mortgage, but I have not been provided with any evidence in relation to his mortgage so cannot say this was the case.

However, regardless of this, the advice to take out the plan wasn't unsuitable just because Mr C had death in service benefits. As has been pointed out, the client can change employer or the employer can change the benefit so there is no way of knowing if this benefit will be available to pay off a mortgage on death throughout the term of the mortgage. I note Mr C has said he would have reviewed matters if his employment or death in service benefits changed. I acknowledge he might have been able to take out life cover at some later point if he lost his death in service benefits but there was no certainty he would have been able to do so or what the cost of that might have been, as his circumstances might have been very different at that point in time.

In the circumstances I am not persuaded that the existence of death in service benefits meant the advice to take out the plan was unsuitable given this would have paid off the mortgage at any point in the 25-year term if Mr C died as long as he kept up payment of the small monthly premium and regardless of his circumstances.

Moreover, Mr C was obviously aware of his death in service benefits at the time of advice. He was therefore fully aware this could pay off the mortgage and if that was something he wanted he could simply have declined the advice, but he didn't. Mr C has suggested that he felt pressured to take out the plan because he was led to believe not doing so could jeopardise getting the mortgage. I don't place any weight on his memory of events from over 20 years ago. Recollections from so long ago are unlikely to be accurate and I think it is far more likely that at the time of advice he wanted separate life cover for the mortgage and was happy to pay a small monthly premium for that.

Mr C has suggested that the plan was unaffordable and argues that the fact he has maintained the monthly premium payments isn't evidence to the contrary. I think being able to maintain payments for 22 years before making any complaint does suggest the premiums were affordable. However, even if that wasn't the case, for me to find the advice had been unsuitable because the premiums were unaffordable there would need to be some evidence that this is something the adviser should have been aware of at the time of advice.

The fact find doesn't support such a conclusion. It shows that Mr C had a net monthly income of £1,350 as against outgoings totalling only £1,072 – so a net disposable income of £278 each month. I note the reference to the possibility of him having to pay child support, but whether he would or the amount he might have to pay wasn't known. In the

circumstances there was nothing in the information provided to the adviser by Mr C, as recorded in the fact find, that indicated he was unable to afford a premium of only £8.71 each month.

My final decision

I don't uphold this complaint for the reasons I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 13 December 2023.

Philip Gibbons
Ombudsman