

The complaint

Mrs H's complaint is that she believed she arranged an endowment policy as the repayment vehicle for her mortgage in 1991, but she was subsequently told she had not. However, she has now found evidence that an endowment policy was set up and a premium was collected. In settlement of the complaint Mrs H wants to be given the benefits of the endowment policy, as she paid £22,000 toward it.

While Mrs H's policy was arranged with a different life assurance company, as Phoenix Life Limited is now responsible for any acts or omissions relating to it, for simplicity I will refer to Phoenix throughout.

What happened

Mrs H has provided two illustrations dated 3 September 1991 produced by her mortgage lender. The first of these sets out the comparative costs of 25-year repayment and endowment-backed mortgages. The second illustration sets out the cost of a pension-backed mortgage. Both illustrations provided three projected maturity values for the relevant investment product, based on different assumed annual growth rates. The endowment policy premium was detailed as £28.05 and the pension premium was £37.71, with a term assurance built into it to protect the mortgage adding an additional cost of £2.83. The term of pension mortgage was to be 26 years and 9 months.

Mrs H was sent an undated letter which welcomed her as a policyholder for a contract with a policy number ending 006G. Only the first page of the letter has been provided and it does not detail what type of policy had been arranged. However, the attached policy schedule, with matching policy number, was for a personal pension policy with a life cover benefit equal to the amount of Mrs H's mortgage.

In addition, Mrs H has provided a payment book for an account ending in 994 what shows payments to the account from February 1994. It detailed that there was a monthly subscription amount of £135.99. The last payment date on the book was in September 2006. The payments recorded in the book were made in a branch of the relevant bank or building society.

Mrs H complained to Phoenix and it responded to the complaint in its final response letter of 18 November 2022. Phoenix confirmed that it had searched its records and couldn't find any evidence of a policy in her name. It confirmed that the policy ending in 006G appeared to have been taken out as the intended repayment vehicle for her mortgage. As there was no record of the policy, it concluded that very few premiums were paid to the policy and it either lapsed or was cancelled at an early stage. As there were not details of the policy, Phoenix said it was unable to investigate the complaint further.

Mrs H was not happy with Phoenix's response and referred her complaint to the Financial Ombudsman Service.

One of our Investigators considered Mrs H's complaint, but he didn't recommend that it be upheld.

Mrs H wasn't happy with the Investigator's conclusions and maintained that her policy had been mis-sold and she had lost £22,000 that she'd paid in premiums to the policy. She asked that the complaint be referred to an Ombudsman for further consideration.

I issued a provisional decision on 17 August 2023, in which I set out my conclusions and reasons for reaching them. Below is an excerpt.

'Mrs H has provided pages from a payment book, which she says is evidence she paid around £22,000 into the policy with Phoenix. I have looked at the payment book and it's the type that would be used for a traditional bank or building society account. The premiums payable to a policy in Mrs H's name, be it a pension or an endowment policy, would have needed to be made by direct debit or standing order to the life assurance company. In addition, the premium payments would have been the same amount each month, which the illustrations indicate would have been around £40 for the pension policy; significantly less than the payments recorded in the payment book. Furthermore, the book has an account number detailed on it, which doesn't match the number of Mrs H's policy. As such, I can't conclude the payment book evidences payments to the Phoenix policy and it can't be taken to indicate how much money was paid toward that policy or that it had a value at any point.

The illustrations Mrs H has provided indicates that her lender discussed three types of mortgage with her; repayment, endowment-backed and pension-backed. The policy schedule she's provided is for a pension policy, not a mortgage endowment policy. Given its timing, I am satisfied that this points to her having opted to have a pension-backed mortgage, rather than an endowment-backed one.

As the policy schedule was issued to Mrs H there is no question that the personal pension policy was set up. However, if only a small number of premiums were paid, given the charges associated with such policies, it is likely that the policy would have lapsed without value. Following that happening, Phoenix would have needed to keep records of the policy for six years to comply with the Regulator's requirements. However, as data protection regulations require a business not to hold information for longer than it is necessary, there would have been an imperative for records to be deleted after the minimum retention period. I can't find Phoenix in the wrong because it no longer has a record of the policy.

I am satisfied that Phoenix completed a search of its systems and didn't find any record of the policy. As such, this indicates the policy has not existed for in excess of six years. Mrs H has said she was told many years ago that the policy didn't exist, which would again indicate the policy hasn't been in force with a value for a long time. In the circumstances, I can't require Phoenix to act as though the policy exists with a value and provide some benefit to Mrs H.'

Phoenix confirmed receipt of the provisional decision and said it had no further comment to make.

Mrs H acknowledged receipt of the provisional decision. She asked that Phoenix be required to search for policy information held in her maiden name. Our Investigator confirmed this had already been done and no records had been found. Mrs H made no further comment.

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.

I have reviewed the file again in its entirety and I have revisited my provisional decision. Having done so, and in light of no further evidence or comment having been made by the

parties, I remain satisfied the evidence indicates the policy Mrs H took out has not existed with a value for many years. As such, I can't require Phoenix to provide any policy benefits to Mrs H.

My final decision

My final decision is that I do not uphold this complaint. Under the rules of the Financial Ombudsman Service, I am required to ask Mrs H to accept or reject my decision before 19 October 2023.

Derry Baxter
Ombudsman