DRN-4310891

The complaint

Mr P and Mrs P complain that Phoenix Life Limited mis-sold two single life whole of life policies and ignored they had a mortgage without any life cover protection.

What happened

In 1994, Mr P and Mrs P each started separate whole of life plans with Phoenix Life. The policies provided £50,000 life cover that was index linked. In 2022, Mr P and Mrs P complained that the whole of life policies Phoenix Life sold weren't suitable to protect their repayment mortgage and that they didn't understand why the policies were recommended. Phoenix Life didn't uphold Mr P and Mrs P's complaint but accepted there had been some delays and poor service when it dealt with the complaints and offered Mr P and Mrs P £200 each for these failures.

Mr P and Mrs P, represented by a claims management company ('CMC'), brought the complaint to the Financial Ombudsman Service. One of our Investigators looked into things and thought Phoenix Life hadn't done anything significantly wrong. The Investigator thought Phoenix Life had considered Mr P and Mrs P had three dependents at the time and that the policy was reasonable as it provided life and critical illness for family protection and the mortgage. The CMC asked that an Ombudsman decides the complaint.

As I reached a similar outcome to the Investigator but for different reasons, I decided to issue a provisional decision and ask Mr P and Mrs P and Phoenix Life Limited for any further comments. In my provisional decision I explained that I intended saying the two whole of life policies Phoenix Life recommended to Mr P and Mrs P weren't unsuitable for their needs at the time.

I've now received responses from Phoenix Life and the CMC representing Mr P and Mrs P. The CMC didn't agree with my provisional decision and provided further comments for me to consider. I will address these in my final decision. Phoenix Life had no further comments for me to consider.

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.

At the time of the sale Mr P and Mrs P had three dependent children and a repayment mortgage with a remaining term of 18 years. The fact-find records Mr P and Mrs P's mortgage wasn't protected by life cover and that Mr P and Mrs P were both self-employed in a family business. The fact-find records the initial objectives of the review as: retirement planning, savings and mitigating tax liabilities. The fact-find had additional comments that said retirement planning and tax mitigation would be considered in the near future.

Phoenix Life recommended four policies to Mr P and Mrs P:

Mr P - £50,000 level term critical illness only cover over a 15-year term.

Mrs P - £50,000 level term critical illness only cover over a 15-year term.

Mr P – £50,000 whole of life policy with benefits indexed linked.

Mrs P – £50,000 whole of life policy with benefits indexed linked.

Mr P and Mrs P didn't take up the recommendations Phoenix Life made for level term critical illness cover. The whole of life policies taken up by Mr P and Mrs P didn't include critical illness cover. There's no evidence suggesting why Mr P and Mrs P chose not to take up the level term policy and I think it would be unreasonable for me to speculate why this was the case - but the recommendation was made to Mr P and Mrs P at the time.

In terms of the mortgage, I can't say for certain what was discussed as this happened some 28 years ago. Mr P and Mrs P's say they don't understand why the whole of life policies were recommended, but there were some detailed discussions about protection recorded within the fact-find that Phoenix Life and Mr P and Mrs P completed at the time. Taking the recorded discussions into account, and recommendations made at the time, I will now consider what I think is more likely than not to have happened in this case.

The CMC representing Mr P and Mrs P reiterated its strong view that protecting an outstanding debt in the event of death is the cornerstone of any competent financial planning, and by not protecting the mortgage Phoenix Life provided poor advice. I can acknowledge receipt of the evidence the CMC submitted to support its position in this regard, but our approach is to look at the circumstances of each case to decide whether the recommendations as a whole were unsuitable. In this case it seems more likely than not Phoenix Life and Mr P and Mrs P agreed that life cover was important, that a fixed term wasn't what they wanted, and that Mr P and Mrs P wanted some flexibility with the benefits being index linked. These features suggest to me that Mr P and Mrs P more likely became focussed on providing family protection as it was a general need. I think this is a reasonable conclusion for me to reach as Mr P and Mrs P were self-employed in the same business and had three dependent children.

The whole of life policies left the mortgage balance without any specific protection, but it seems more likely than not to me that Mr P and Mrs P would have understood this to be the case at the time. The application forms for the two whole of life policies support this as they record the policies were to be used for personal protection. Mr P and Mrs P now say they don't understand why whole of life plans were recommended and that Phoenix Life ignored protecting the outstanding mortgage balance. I understand this is quite possible after 28 years, but I've decided the notes and application forms from the time are enough to persuade me Mr P and Mrs P knew at the time the mortgage would not be protected by a separate policy and that their general need for life cover was more important to them.

The recommendations made by Phoenix Life provided Mr P and Mrs P with valuable life cover – and critical illness cover separately (although this wasn't taken up. They had no life cover at all at the time but did hold other invested assets and an amount in a bank that was similar to the outstanding balance of the mortgage. Phoenix Life didn't recommend a separate level term cover to protect the outstanding mortgage but did recommend two £50,000 whole of life policies. I accept that generally we would consider whole of life policy unsuitable for a mortgage, but I think it's more likely the two policies recommended were intended to provide Mr P and Mrs P with an overall sum assured that Mr P and Mrs P could use for family protection and, if required, reduce, or clear any mortgage balance if one of them passed. The life cover on the whole of life policies was guaranteed for 10-years and was indexed each year – and over 10 years it seems likely the mortgage balance would have reduced. The fact-find records that Mr P and Mrs P wanted some flexibility at the time, so the policies don't seem to me to unsuitable for Mr P and Mrs P's general needs in the circumstances of this case.

Phoenix Life accepts that it didn't handle Mr P and Mrs P's complains as well as it should have. Phoenix Life says it told the CMC and Mr P and Mrs P several times that it had no copies of the policies, which it accepts was incorrect. This delayed Phoenix Life's handling of the complaint. However, as complaint handling isn't a regulated activity this isn't something I can consider in my decision. So, for completeness, if Mr P and Mrs P wish to accept the offer of £200 Phoenix Life has already made in this regard, they should contact Phoenix Life direct to arrange this.

My final decision

For the reasons I've detailed above, I've decided the whole of life policies Phoenix Life Limited recommended to Mr P and Mrs P weren't unsuitable in the circumstances of this case.

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 19 September 2023.

Paul Lawton
Ombudsman