DRN-4193162

The complaint

Mrs C complained that a Market Value Reduction (MVR) was applied to her pension benefits when she took them as a lump sum. She believes that she was not made aware of the effect of the MVR on her benefits by Phoenix Life Assurance Limited. (Phoenix Life).

What happened

In November 1988, Mrs C established a personal pension with Phoenix Life which was funded by her contracted out National Insurance contributions and invested on a with profits basis. Contracted out NI contributions were invested into the pension from its inception until April 2004.

In July 2016, Mrs C telephoned Phoenix Life to ask about her options for taking the benefits she had built up in this plan. She expressed an interest in taking her benefits as a lump sum. Phoenix Life wrote to Mrs C on 28 July, providing a tailored pack outlining all the options available to her, together with a plan valuation and the relevant forms to complete to enable her to instruct Phoenix Life to proceed with any of these options if she decided to do so. The first page of this pack stated:

Following your telephone conversation with our representative you selected to proceed with a Cash-in Lump Sum (UFPLS) option. The pack you have received contains multiple options so please ensure you are completing the correct form based on your conversation with our representative. If an alternative option is completed or if you have changed your mind and no longer wish to proceed with this option, please do not return any forms and call our contact centre so that further options can be explained to you in more detail.

The pack also contained the following explanation of the MVR:

Market Value Reduction (MVR)

An MVR may be applied to any investments in the with-profit accounts. An MVR is used to reduce the claim value of a plan, where the current value of the plan is greater than the plan's fair share of the underlying investments. Please see your copy of the guide to how we manage our with-profit fund for further details. You can obtain a further copy from our website at www.phoenixlife.co.uk or by calling our Customer Contact Centre and requesting one.

The effects of any MVR being applied to the plan on the pension date 28 July 2016 is shown in the pension fund table in the Retirement Options Statement. The pension plan has at least one date when we guarantee that no MVR will be applied, known as an MVR free date. The table also shows the next MVR free date following the pension date.

In the Retirement Options Statement provided as part of this pack, the following information pension valuation information was given:

Total Pension fund value: £18,008.32
Funds value: £28,639.88

Market Value Reduction (MVR): £10,631.56
It also indicated that the next MVR free date was some 10 years in the future.

Mrs C completed a Cash-in Lump Sum option form to Phoenix Life on 2 September 2016. In this form she indicated that she had used Pension Wise for help with her retirement options but had not obtained advice from a regulated financial adviser.

Phoenix Life wrote to Mrs C on 8 September 2016 to confirm that the sum of around £13,500 had been paid into her nominated bank, and just over £4,500 income tax had been deducted.

On 4 July 2022, The Pensions Tracing Service wrote to Phoenix Life on behalf of Mrs C to seek information relating to Mrs C's pension benefits. Phoenix Life replied on 20 July to confirm that the benefits had all been taken in 2016 and that no further value remained within the plan.

Following this, Mrs C telephoned Phoenix Life on 28 July to ask for some more information about the policy. During this call she was provided with some inaccurate details and also incorrectly told that certain archived documents could not be provided.

Phoenix Life wrote to Mrs C on 3 August to confirm the details of her policy, the amount paid to her in September 2016 and the MVR reduction that had been applied to her policy. This letter did not provide all the information that Mrs C had requested.

Mrs C complained to Phoenix Life on 17 August 2022 as she was unhappy at the level of the MVR that had been applied to her pension. She also complained that she had not been made aware that an MVR would apply when she took out the pension and that she had been told that none of the plan details she had asked for could be provided.

Unhappy with the time it took Phoenix Life to respond to her complaint, Mrs C brought her complaint to the Financial Ombudsman Service.

Phoenix Life responded to her complaint on 30 November 2022, upholding the elements of her complaint relating to the inaccurate information provided to her in the call on 28 July 2022, and the incomplete information it had provided in its subsequent letter on 3 August. It paid her £150 in respect of the distress and inconvenience this error had caused her, together with a further £50 compensation for the delay in responding to her complaint.

It did not uphold the element of her complaint about the MVR applied to her benefits when she took them in September 2016. It stated that the Terms & Conditions of the plan explained that such an MVR could be applied to benefits taken before the scheduled date and that the annual statements she had received also explained that an MVR could be applied if the benefits were taken earlier than planned. Phoenix Life also referred to the retirement options pack provided to Mrs C in July 2016, indicating that it showed that an MVR would apply, together with the amount of the deduction if she proceeded with the withdrawal of benefits.

Unhappy with Phoenix Life's response, Mrs C asked our service to investigate her complaint. Our investigator considered the evidence in this case, before recommending that Mrs C's complaint about the MVR not be upheld, and that the £200 compensation paid in respect of the poor service Mrs C had received from Phoenix Life was appropriate in the circumstances of this complaint.

Following our investigator's view, Mrs C raised a subsequent complaint element with Phoenix Life in April 2023, as she had become aware of information from HMRC which indicated that it estimated that she could have an entitlement related to contracted out pension equivalent (COPE) of c£30 per week as a result of contracting out of the additional state pension. Mrs C felt that this amount should be paid to her by Phoenix Life.

Phoenix Life investigated this additional element of her complaint and responded on 26th April 2023. It explained that the HMRC COPE estimate may not be based solely on the policy Mrs C had held with it. Nevertheless, it also explained any benefits that Mrs C had held with Phoenix Life that could have contributed toward her COPE estimate had already been taken in 2016, so Phoenix Life believed that it was not liable to pay her any income related to COPE.

Mrs C disagreed, so the complaint has been passed to me to make a final decision.

I understand that Mrs C may well wish to make a further complaint relating to the circumstances surrounding the sale of the pension policy to her. This would constitute a different complaint to the issues that Phoenix Life has already responded to, so I will not be able to comment here on any issues related to the sale of the product or its suitability for Mrs C.

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.

Having done so, and considering the view of our investigator, I have reached the same conclusion and will not be upholding Mrs C's complaint.

I can appreciate that this will be disappointing for her, so let me explain how I have reached my decision.

Firstly, I think it's important to explain that the MVR isn't designed to be any kind of penalty. In a with profits fund, like the one Mrs C's pension was invested in, every investor has a 'share' of the fund. The way a with profits fund works is that the contributions of all the investors are added together and invested in a wide range of assets. Every investor has a target date on when they plan to take their benefits, and this is reflected in their fund values. If any one investor decides to take their benefits earlier than their planned date, an MVR is commonly applied to ensure that the amount of the benefits being taken isn't unfairly higher than the share of the value of the underlying assets in the fund. Mrs C's withdrawal of her benefits was several years earlier than planned, and the MVR that was applied would have been calculated to reflect that.

Mrs C has said in her complaint that she didn't understand what an MVR is and the effect it would have had on her benefits. I find that the retirement pack she was sent on 28 July 2016 did clearly describe the nature and purpose of an MVR, that one would apply to the withdrawal of her benefits, and also what the likely level of that MVR would be. It also included information that showed when it would guarantee an MVR would not be applied to the benefits. I note that Mrs C told our investigator that she did not remember receiving this retirement pack, but as the pack was correctly addressed to Mrs C I find it reasonable to conclude that it was delivered to her.

In conclusion, I find that Phoenix Life made Mrs C aware that an MVR could be applied to her plan. And when the time came, it clearly showed the level of MVR being applied before Mrs C decided to transfer her benefits. So, I don't think Phoenix Life acted unfairly or unreasonably by applying an MVR to Mrs C's pension plan.

I think that it’s also important to note that Phoenix Life was not responsible for providing Mrs C with any financial advice or guidance, it simply had to provide her with the information in a clear fashion, which I believe it did. The retirement pack also stated that:

*We strongly recommend that individuals considering the retirement options seek guidance from **Pension Wise** or obtain regulated financial advice.*

The application form that Mrs C submitted to allow the withdrawal to take place indicated that she had consulted Pension Wise but had not sought regulated financial advice. Given this, I cannot see that Phoenix Life has done anything wrong in this regard either.

Consequently, and disappointing as it will be for Mrs C to hear, I do not find Phoenix Life to have done anything wrong in relation to the application of the MVR and I won’t be asking it to do anything else in respect of that.

Similarly, I won’t be asking Phoenix Life to do anything more in terms of providing her with an income in relation to the COPE estimate provided by HMRC. The HMRC estimate of COPE benefits is based solely upon the information it has which relate to the total amount of contributions made during the years that she was contracted out of the additional state pension. Such estimates are not kept up to date and, in this case, do not reflect that Mrs C has already taken the benefits that would have contributed toward her COPE payments. I find that Phoenix Life was correct when it explained to her that she had already taken the benefits that may have provided this income to her.

Turning now to the level of service Phoenix Life provided to Mrs C when she made enquiries about her pension, I note that it has acknowledged that it fell below the standard of service that Mrs C should have received. Consequently, it paid Mrs C £150 compensation in respect of the distress and inconvenience this caused her, together with an additional £50 in respect of delays in responding to her complaint. Taking all the circumstances of this case into account, I find that this is an appropriate level of compensation.

My final decision

For the reasons explained above, I will not be asking Phoenix Life Assurance Limited to do anything more.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs C to accept or reject my decision before 20 October 2023.

Bill Catchpole
Ombudsman