

The complaint

Ms W complains that if she takes retirement benefits from her personal pension plans before age 65, Phoenix Life Limited (Phoenix) will impose a Market Value Reduction (MVR) on the value of her pension plans which will significantly reduce their value.

Ms W says she intends to retire at age 60, which was the retirement age selected when she took out her pension plans, so Phoenix shouldn't apply an MVR.

What happened

Ms W took out two personal pension plans invested in a with-profits fund in 1990 with a provider whose business was subsequently taken over by Phoenix.

The illustrations provided to Ms W when she took out the plans used an assumed pension age of 60 years.

Annual statements were issued to Ms W from the provider of her plans.

In 2008 an annual statement was sent to Ms W which set out the value of her plans and referred to an assumed pension age of 60 years. There was a total value and a transfer value, with the transfer value being significantly lower.

In 2011 an annual statement was sent to Ms W which set out the value of her plans. Again, it gave a transfer value which was significantly lower than the total fund value. The assumed pension age on this statement was 65 years.

In 2023 Ms W contacted Phoenix, who had taken over the administration of her plans from her former provider. She asked for a current valuation of her plans and information about how to cash them in.

In November 2023 Phoenix sent out a retirement pack with the value of her plans and her retirement options. The pension summaries set out an intended retirement date (IRD) of 65 years and said that at the current value date, a Market Value Reduction (MVR) would have been deducted from the value of her plan. The MVR reduced the value of Ms W's plans by approximately 50%.

In May 2024 Phoenix issued an annual statement quoting the value as of 31 December 2023. The IRD was age 65 and the document referred to an MVR which could apply if the pension savings were accessed before the selected retirement date. The transfer value was roughly half the total value, which showed that a deduction would be made if the benefits were accessed at that point.

Ms W complained to Phoenix about the value of her pension plans and in effect said that her

intended retirement date had been changed without her knowledge or consent.

Phoenix didn't uphold her complaint. It said that because her plans received DSS contributions, they were governed by government retirement age legislation. Phoenix said as legislation in 2011 had increased the state pension age for women to 65 years, Ms W's intended retirement date on her plans had been amended as a result.

Phoenix said the annual statements sent to Ms W since 2011 had clearly indicated that her assumed pension age or IRD for her plans was 65.

Phoenix said the annual statements explained the value of the plan could be claimed before the IRD but in that instance an MVR could be applied. Phoenix said the terms of the plan entitled it to apply an MVR if the benefits were taken before age 65 .

Ms W disagreed with Phoenix and referred her complaint to our service. In summary she said the original plan documentation demonstrated her pension age was 60. Ms W said Phoenix had not written to her to inform her this had changed as a result of a change in government legislation. She said she had been intending to repay her mortgage and claimed compensation for mortgage payments and interest for the delay in resolving her complaint.

Our investigator considered Ms W's complaint but didn't think it should be upheld. The investigator considered all the documentation and noted the statements sent to Ms W by Phoenix explained that an MVR may apply if the pension was accessed before the plan holder's selected retirement date, or if it was transferred before that date. The investigator also noted the statements explained that the scheme would be operated in accordance with the rules of the scheme, or any changes made to those rules as a result of changes in legislation.

The investigator said the retirement pack issued to Ms W also referred to the MVR. The investigator didn't consider that Phoenix had made a mistake in applying the MVR and was of the view that it had acted in line with the terms and conditions of her plans.

Ms W didn't agree with the investigator's conclusions and in summary said that Phoenix had changed the terms of her plans without her knowledge or consent. She said it hadn't informed her of the change to her IRD and that the government legislation didn't and shouldn't affect her private pension.

Ms W said Phoenix wasn't treating her fairly as her plans had been set up on the basis that they would be held until age 60, and it was at that point that she would withdraw her fair share of the fund. Whereas Phoenix was now saying she wouldn't be able to access her benefits for a further five years, if she didn't want to risk an MVR being applied to the value of her plans.

Ms W said the MVR was a penalty for someone intending to take their pension funds at the IRD of 60 and that her target date, as set out in the documentation she had supplied, was 60 years of age. She reiterated that she wasn't taking her benefits early, she was seeking to access them at her original IRD of 60.

Ms W also said she didn't recall being provided with a copy of the terms and conditions when she took out the plan, or at any point after until recently when our service had sent her a copy.

As no agreement could be reached Ms W's complaint was referred to me for review.

I issued a provisional decision where I didn't uphold Ms W's complaint as I considered that the terms and conditions of her plans allowed Phoenix to change her selected pension age in line with a change to the state pension age for women in 2011 and I considered it more likely than not, that Phoenix (and/or its predecessor) had informed her of that change.

The following is an extract from that decision.

"What I've provisionally 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.

Ms W has two with-profits personal pension plans and one of the features of that fund is that if a plan holder withdraws from the fund, they may have a Market Value Reduction applied to their share of the fund unless they withdraw on a protected date, or an MVR is not being applied at that time. The purpose of applying an MVR is to ensure that the plan holder receives their fair share of the fund and that equally those remaining in the fund are not disproportionately impacted when others withdraw.

Phoenix is the provider of Ms W's plans and responsible for the administration of those plans.

Ms W says that when her plan was set up, her intended pension date was 60 years of age, and that Phoenix has since sought to change that date without informing her or obtaining her consent. She says it was only when she contacted Phoenix to find out about accessing her retirement benefits that she was informed the value of her funds would be decreased significantly (by approximately 50%) by the application of an MVR, if she took her benefits before 65.

Ms W has provided some product information from when she took out the plan and I can see that the original illustration used an assumed pension age of 60. However, I note that the illustration document stated: "This illustration is supplied for information only and cannot form any part of a contract with NPI." So I don't think the illustrations can be considered to constitute the agreement between Ms W and the provider.

I can also see Ms W's annual statement from 2008 referred to an assumed pension age of 60."

"So I think when these plans were set up, the assumed pension age for Ms W was 60 years, which at that time was the state pension age for women.

Section 16 of the terms and conditions for the plans provides that:

"16. Pension Date

(a)(i) In the case of Protected Rights, the pension date shall be the date specified by the Secretary of State as the State Pension Age."

And I note that the majority of the value of Ms W's plans relates to protected rights and Phoenix has explained that this plan received, what were then, DSS contributions which is why the pension date was linked to the state pension age.

So when the state pension age for women changed, the assumed pension date of Ms W's plan changed in line with the new state pension age, as per the provisions in section 16 and section 19 (which I will come back to later on in this decision) of the terms and conditions. I consider this is also evidenced by the later pension date on Ms W's annual statements from 2011 onwards.

I note Ms W has said she doesn't recall being provided with a copy of these terms when she took out the plan and has questioned whether they were provided to her. However, as these plans were taken out in 1990, I don't think it is surprising that she doesn't recall this or doesn't have a copy of that document. That doesn't mean however that it wasn't provided to her. It is common practice for providers to provide customers with the terms and conditions of a pension plan and so I think it is more likely than not, that Ms W's provider at that time did provide her with a copy. And I note the terms and conditions are date stamped in 1989 which would be the relevant time.

I also think the application by Phoenix of an MVR if benefits are accessed before age 65, is in line with provision 17 of the terms and conditions, which states:

"17 Policy Value at Pension Date

At the pension date the allocation of units will be cancelled and their value will be calculated at the bid price applicable on the pension date, with the following adjustments:-

(i) if the member has not attained the age of sixty five at the date of cancellation the value of any cancelled units in the with-profit fund will be determined by the Actuary

(ii) if the pension date is for any reason either:-

(a) before the fiftieth birthday of the member or

(b) on or after the fiftieth birthday but before the sixty-fifth birthday of the member at a time when less than ten years regular contributions have been paid.

then a deduction as determined by the Actuary will be made from the value of initial units or, if no initial units exist, ordinary units allocated in respect of regular contributions allocated to this policy (for this purpose each increase in regular contributions by endorsement shall be treated as contributions to a separate policy) and

(iii) if the pension date is for any reason on or after the fiftieth birthday but before the sixty- fifth birthday of the member at a time when ten years or more regular contributions have been paid (for this purpose each increase in regular contributions by endorsement shall be treated as contributions to a separate policy) the deduction from the value of units allocated to this policy is zero. The deduction may however be varied at the discretion of the Actuary."

I note that at the time these terms and conditions were issued, an MVR was described in this way, namely the Actuary of the with-profits fund making a deduction to the value, rather than the term "MVR" which became more commonly used in later years.

So, I think the terms and conditions of Ms W's plans gave the Actuary of the with-profits fund discretion to reduce the value of the units and therefore of the plan if the benefits were taken from the plan before age 65.

However, that discretion wouldn't be applied solely to Ms W, it would be exercised in line with the decisions being made about the management of the fund and would also apply to other plan holders in a similar position seeking to access their pension benefits.

And I think it is important to note here that while a business managing a with-profits fund has discretion as to how it runs its with-profits fund, it is accountable to the industry regulator, the FCA. So, it can't act in an arbitrary manner and has to manage its with-profits fund in line

with rules and guidance set out by the regulator.

Those businesses are required to appoint a with-profits actuary and the FCA provides rules and guidance on their duties. They will also have an independent 'With-Profits Committee' whose role is to protect the interests of with-profits policyholders and ensure that they are treated fairly.

In addition those businesses are required to publish their "Principles and Practices of Financial Management" document which sets out how they manage the fund. I note Phoenix has referred to that document in the documentation it sent Ms W about her plans and has confirmed the document is available on its website. So, there are a number of checks on how a with-profits fund is managed.

I am also satisfied on balance that section 19 of the terms and conditions gave Phoenix the ability to amend the terms if there had been a change in legislation. It said as follows:

"19 General

(c) NPI reserves the right, within the terms of general provision 2(b), to make amendments to the provisions of this policy as it deems necessary if legislation is enacted or exceptional circumstances arise which make it impossible or impracticable for NPI to implement the terms of this policy."

So I think that would have allowed Phoenix to amend the plan in line with changes in legislation in respect of state pension age for women, which came in after Ms W's plans were taken out.

And in any event, as I have said, section 16 provided that the state pension age was the pension age for the protected rights under the plan.

In addition, this change to the state pension age took place about twelve years before Ms W made her complaint, so I don't think it is surprising that there isn't now any correspondence available specifically referring to that change. However, I think that the pension date of 65 years on the annual statement in 2011, and those that followed, demonstrated that a change had taken place.

*I am also satisfied that the 2011 statement gave information about the value of Ms W's pension, the potential impact of an MVR and about protected rights.
It said:*

"Total pension fund value - This is the sum of the investments in each of your investment funds. Neither this value, nor the bid value, make allowance for any early withdrawal or transfer charge which may apply if benefits are taken before the assumed pension date. The value shown does not include any allowance in respect of final bonus (where applicable), or the effect of any Market Value Reduction (MVR) that may now apply in the event of a claim.

In the event of a claim at a future date, the value will include any final bonus (where applicable) or MVR applicable at that time.

An MVR may be used to reduce the claim value of a plan where the current value of a plan is greater than the plan's fair share of the underlying investments.

An MVR generally applies on transfers and switches out of the with-profits fund and / or Capital Account. They do not normally apply on death. For retirements, an MVR does not apply in some circumstances and you should ensure you check your policy document for

details.

Please see your copy of National Provident Life Ltd.'s A Guide to How We Manage Our With-Profit Fund for further details, or go to www.npi.co.uk.

Protected rights - These are benefits which build up from contracted out rebates we have received from the National Insurance Contributions Office, or from similar benefits transferred from other schemes, and the growth of these contributions. They represent the part of your, and your employers, national insurance contributions which have been paid into your pension plan."

I also note this statement directed Ms W to further sources of information if she wanted to check the position regarding the MVR.

In addition when Ms W contacted Phoenix in 2023, it explained in clear terms that an MVR would apply to her plans at that time. So, I think it gave Ms W sufficient warning and this enabled Ms W to choose whether to access her benefits before 65 and receive a value reduced by an MVR, or wait until age 65 to receive the full value as at that date, without any MVR being applied.

In addition an MVR was referred to in the annual statement issued in 2024.

It said:

"Market Value Reduction (MVR) - For pensions invested in Unitised With-Profits funds a Market Value Reduction (MVR) may apply if you decide to access your pension savings before your selected retirement date or when transferring your pension to another provider. The purpose of an MVR is to maintain fairness between plan holders exiting the fund and those remaining in it."

As the investigator has set out, an MVR is not a penalty for the plan holder, it is applied with the objective of trying to balance the rights of those leaving the fund and those that remain invested so that each gets their fair share.

Overall, I am satisfied on balance that Phoenix is acting within the terms and conditions of the plans, in deciding to apply an MVR to Ms W's plan values, where the benefits are accessed before age 65.

In addition I consider, the terms and conditions of the plans allowed Phoenix to change Ms W's intended retirement date because of the change in legislation to state pension age. I also think that the age 65 date on the statements issued after the change in legislation, demonstrated the change to her IRD had taken place.

I appreciate Ms W's disappointment at the position she finds herself in of making a choice between accessing her benefits now with the application of an MVR or having to wait until age 65. However, ultimately, I don't think Phoenix has acted incorrectly here or treated Ms W unfairly."

Both parties were then provided with an opportunity to respond with any representations they wished to make.

Phoenix made no further representations.

Ms W responded and disagreed with my provisional decision. In summary she said:

- The terms and conditions were legalistic, buried deep in the original documentation and unlikely to have been understood by an average person and Ms W referred to the “average man on the Clapham Omnibus.”
- Phoenix had never informed her that her intended retirement age had changed from 60 to 65 in line with the Secretary of State legislation.
- Ms W referred to the FCA’s Treating Customers Fairly regulatory guidance and said Phoenix had failed to inform her that it was extending her retirement age by five years, which was a significant change to her pension, so it had not treated her fairly.
- She referred to the Consumer Duty introduced by the FCA and noted firms must avoid causing foreseeable harm to retail customers. She acknowledged the consumer duty provisions were new, but said they simply put into words what the FCA had expected of firms under years of the TCF guidance and the previous Handbook guidance.
- She reiterated that Phoenix had issued a statement indicating her pension was worth approximately £32,000 but would only pay about £15,000 if she wished to withdraw the money.
- The documentation she initially received was for a selected pension age of 60, so Ms W said she wasn’t seeking to access her benefits early. She said Phoenix had failed in its duty of care by failing to point out this significant and important change to that date.
- If the adviser or the provider had informed her in 1990, before she took out the plans, that any changes in legislation would affect the selected retirement date, she wouldn’t have taken out this pension plan.

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 carefully considered the representations made by Ms W, I still remain of the same view as in my provisional decision (an extract of which forms part of this decision) for the same reasons.

I would firstly note that having reconsidered the documents provided by Ms W, I can see *there is* an extract from a document entitled “**SECTION 4 HOW YOUR GUARANTEE WORKS.**” It originally appeared to me to be connected to the 2008 statement, however this document refers to the move to Phoenix in 2015, so it must have been issued in 2015 or after.

It explains what an assumed pension age was and says:

“Your assumed pension age is shown on the enclosed letter. It’s normally 60 or 65, but can vary. You or your employer would have selected this when you first took out your plan. This is when your guarantee becomes available.”

That document then had a section as follows:

“What if I want to access my pension savings before my assumed pension age?”

Because the guarantee only applies from your assumed pension age, if you want to access your pension savings before then, you won’t benefit from the guarantee and you’d receive a

substantially lower amount.

This is because you'd receive an amount reflecting the actual rate of growth in the NPL With-Profits Fund, less charges over the lifetime of your plan. There have been a number of years when the actual growth less charges has been lower than the guarantee.

*So, if you access your pension savings before your assumed pension age, the payment from your plan will be reduced. This reduction is known as a **market value reduction** or **MVR**. The MVR can be substantial (for some customers, it could be as much as half the value of their with-profits pension savings), and is likely to increase over time. To find out how much the MVR on your own pension plan is, please call us on 0345 888 4477.*

There's no MVR when you reach your assumed pension age or if you die before then."

Although I note it refers to the possibility of a pension age of 60, I don't think that it changes matters as it isn't a contractual document. This extract from a document contains notes to explain how the plan works however the enclosed letter detailing the date of pension age isn't included with it. So, I don't think on balance that it demonstrates that Ms W's assumed pension age was 60 years at this point. And, as I have said, the assumed pension age on Ms W's 2011 statement, and statements issued after that date, was 65 years.

I would then also like to address the points raised by Ms W in response to my provisional decision.

I agree with Ms W that documentation should be written in such a way as the everyday person, as Ms W says, the average man on the Clapham Omnibus, would be able to understand.

I don't agree however that the terms were overly legalistic or that they were deeply buried in the document. The terms and conditions were separated in different sections set out in the contents section which identified the different areas. Section 16 was entitled "Pension Date" and Section 17 "Policy Value at Pension Date," so I think those titles were self-explanatory.

I don't think that the terms and conditions relating to the Pension Date, Value at Pension Date and the General section, were hidden in the terms and conditions document, unclear, presented unfairly or presented in a misleading way. I think it was clear from this document that the assumed pension age could change.

I am not persuaded that, it is more likely than not, that Ms W would have made a different choice if Phoenix had highlighted this risk more prominently in its documentation because it was a potential future risk that was fairly vague in nature and difficult to predict. I consider there is an element of hindsight in Ms W's representation that she would have acted differently.

I agree with Ms W that Phoenix had to treat her fairly as per the principles for businesses and guidance set out by the Financial Conduct Authority (FCA) previously the FSA. However, I am not persuaded on balance that changing the pension age, in line with a change in state pension, was unfair to Ms W when there was express provision for this in the terms and conditions and given the nature of her plans which received DSS contributions and were therefore governed by government retirement age legislation.

I also think it more likely than not, that the provider gave Ms W some notification about this change at that time. Unfortunately, as the change dates back many years, correspondence sent to customers, and to Ms W at that time, is not available, except for the annual statement sent to Ms W in 2011 which states the assumed pension age for her plan is 65 years. As I have said in my provisional decision, I consider that is supportive of the fact a change took place and Ms W was, it is more likely than not, informed of that change at that time. So, overall I don't think Phoenix has failed to do what it ought fairly and reasonably to have

done, as the provider of the plan, as I consider it was entitled to make the change under the terms and conditions, and it (and/or its predecessor) informed her of that change.

Ms W has referred to the Consumer Duty which is a regulatory requirement made up of rules and guidance, introduced fairly recently by the FCA, which Ms W acknowledges. Ms W's plans are closed products which means the Consumer Duty only applies to events occurring on 31 July 2024 and onwards. The Duty doesn't apply retrospectively to events that happened before that date. So, I am not persuaded that it applies here, as the change to her plans took place in 2011, and Ms W is complaining about not being informed about the change in the time shortly after. And the information and statements she was provided with by Phoenix which prompted her complaint, were issued in November 2023 and May 2024 respectively.

But in any event, Phoenix had to treat Ms W fairly and give her information that was clear, fair and not misleading which is set out in the Code of Business Sourcebook (COBS). I don't think Phoenix hid the issue of the difference in value depending on when Ms W accessed her benefits, and this was referred to in the statements and documentation it sent to Ms W. So, I don't think the information it sent Ms W was unclear, unfair or misleading.

I consider Phoenix gave Ms W the information so she could decide whether she wanted to wait to obtain the value of her plan without the imposition of an MVR. As I have said, those documents specifically referred to the MVR and its impact on the value of her plans.

The statement gave a value which was higher than the amount that would be paid if she accessed the benefits at that time, but I think that was so Ms W could see the impact of taking her benefits before age 65. So, I don't think that demonstrates that Phoenix was trying to mislead her in any way. The value of the plans was still relevant information and would be given with the intent of informing Ms W so that she could make decisions about accessing the benefits under her plans and consider what the position might be, if the benefits were accessed at 65.

My final decision

My final decision is that I don't uphold Ms W's complaint against Phoenix Life Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 31 July 2025.

Julia Chittenden
Ombudsman