

## The complaint

Ms S complains that Phoenix Life Limited (Phoenix) states the retirement age of her Personal Pension Plans (PPP) is later than what she arranged, meaning charges will be applied if she takes benefits now or transfers the plan. She wants the original retirement age reinstated and the charges removed.

## What happened

Ms S took out two PPP's with NPI, now part of Phoenix in 1992, having taken advice from Ernst & Young. One plan was used to contract out of the State Earnings Related Pension Scheme (SERPS), referred to as the protected rights plan. The other (non-protected rights) plan received contributions from Ms S. Both plans invested in the Managed and with profits funds. She says the adviser's recommendation was that the plans be used to repay her mortgage, a pension mortgage. Where the mortgage would be interest only and the tax-free cash sum from the PPP would be used to repay the debt after 25 years, in 2017, when Ms S would be 50. In 1992 the earliest age at which pension benefits could be accessed was 50, but from April 2010, this increased to 55. Over the years the ownership of NPI changed, Ms S stopped paying contributions and having also moved home, she says she didn't receive any information about her plans for some years.

In 2024 Ms S spoke to an adviser about another pension and says coincidentally she was also contacted by Phoenix after it had made an electoral roll search. It provided details of the plans to the new adviser. Ms S says this information showed incorrect retirement dates of 2027 and 2032 (age 60 and 65) as this had been set at 50, given the intention to repay the mortgage in 2017. The combined value of the plans was around £78,000. But Phoenix said there would be an early claim charge and a Market Value Adjustment or Reduction (MVA) on the with profit investment of around £23,200 in total if Ms S wanted to take her benefits or transfer to another provider before age 65. Ms S was unhappy with both the MVA and the overall performance of the plans, which she said was poor because of historical issues impacting how the NPI with profits fund could be invested. Her adviser raised a complaint with Phoenix on her behalf.

Phoenix didn't accept the complaint. It said all its records indicated the retirement age was 65, which was stated on annual statements sent to Ms S. Where its records went back to 2011. It said Ms S had taken out a pension term assurance policy providing life assurance cover only, which was written to age 50. It said both the early claim charge and MVA Ms S had complained about were features of the plan. With MVA designed to protect other investors in the with profits fund following a fall in the fund value and was "*punitive by design*". Ms S didn't agree. She said she was looking for the original paperwork and had never been asked about or agreed to any change on the retirement ages she chosen at outset. She said the large penalties applying to her plans made it impossible for her to move them.

Ms S referred her complaint to our service and our investigator looked into it, but she didn't uphold it.

Our investigator said Phoenix had provided the original policy schedule from 1992 and a copy of the Terms and Conditions. The policy schedule didn't set out a specific retirement age for the plan but said that benefits could commence at "*any pension date permitted by scheme rules*". Under section 16 headed "*Pension date*" the Terms and Conditions said the protected rights plan retirement age was "*State pension Age*" (SPA). And that a non-protected rights plan's retirement age could be selected between age 50 and 75. Under section 15 headed "*Policy value at pension date*" the Terms and Conditions said that before age 65 the value of any with profits fund investment would "*be determined by an actuary*". She said Phoenix had confirmed the with profit fund had a 4% guaranteed annual bonus rate and the actual returns achieved historically hadn't matched this, which is why the MVA was in place but that this wouldn't be applied at age 65. Our investigator said this might not have been fully explained when Ms S received the advice. But Phoenix was only the administrator of the plans. And there was no evidence it wasn't acting in line with the Terms and Conditions or that it was treating her differently to any other customer in the with profits fund. So, as it hadn't done anything wrong, she couldn't tell it to waive the MVA.

Ms S didn't agree and provided some records she'd located from when she took the plans out in 1992. She said she'd considered complaining to Ernst & Young but understood she had no grounds to do so. She said when the minimum age to take pension benefits was increased to 55 in 2010 this should have applied to her plans, and in any case, the special rules around protected rights had been abolished in 2010. She said Phoenix stated that from age 55 the early retirement charge was capped at 1%, but despite this it was still applying a large MVA. Our investigator said the documents referring to age 50 only related to the separate pension term assurance plan. And there was no evidence the pension plans had been written to age 50, which wasn't possible for the protected rights plan in any case. She said the MVA would always potentially apply until age 65 under the Terms and Conditions, and this should have been explained by the adviser. Ms S said she wanted to know when the MVA had been put in place, as it wasn't referred to in the original documents from 1992. She said it made no sense to have taken out plans with three different end dates of 50, 60 and 65, and no one had been able to explain this.

As Ms S doesn't agree it has come to me to decide.

### **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, I'm not upholding the complaint.

As our investigator explained, Phoenix only administers Ms S's pension plans. It didn't provide her with advice to take them out, and I think that is the key issue here. I can only consider Phoenix's actions in this complaint, and many of the queries Ms S raises would be better answered by the adviser. But from the evidence the plans recommended don't appear appropriate for a pension mortgage targeting repayment of the loan at age 50. NPI might not have been aware of the specific reason for arranging the plans in 1992, but even if it had been, the adviser was still responsible for the advice given, which should have been suitable for Ms S's needs.

The documents Ms S has provided showing a maturity date at age 50, do only relate to pension term assurance, which like most life assurance policies would have a fixed end date on which the premiums charged would be based. So, with the mortgage being repayable at age 50, setting the term to then was appropriate. As Ms S says when she took out the plans in 1992, the SPA for women was 60, so the protected rights plan was likely set up to that age by default. And she may have been provided with projections to that age by the adviser.

Subsequent legislative changes removed the link to SPA but also increased the minimum age at which any pension benefits can normally be taken to 55, and this is soon to rise to 57. Based on what she's said the other plan ought to have been set up to age 50 and it may well be that she was shown illustrations at the time projecting benefits sufficient to repay her mortgage at 50.

However, under NPI's Terms and Conditions, the plan has a default pension age of 75 but allows benefits to be taken earlier on request. Importantly the Terms and Conditions clearly show that the exit charge would apply and that the value of the with profits investment would be at the "*determined*" or calculated by the actuary if benefits were taken or transferred before age 65. This type of wording is what is now commonly referred to as MVA or reduction. And the main issue impacting Ms S arrangements is this MVA clause. The Terms and Conditions applying are complex, as were the plans charges, but it was the adviser's responsibility to guide Ms S on these issues at the time, not Phoenix's. It's possible that other pension providers at the time would have offered plans that were more appropriate around the use of MVA.

With profits funds are subject to significant oversight and regulation from the Financial Conduct Authority (FCA) which includes the use of any MVA, so it's highly unlikely that Phoenix is treating Ms S any differently from any other investor in the fund, and there is no evidence that it is. It is also the case that investments in general and with profits funds in particular, haven't performed as well as many commentators in the early 1990's expected they would. Consequently, with profit funds offering guarantees (as with the guaranteed 4% annual return here) have generally been conservatively invested for many years. Whilst this reduces risk (increasing the chance of the guarantee being honoured) it also limits the potential for higher returns.

So, whilst I understand Ms S's frustration about what has happened, there's no evidence Phoenix is treating her unfairly or not acting in accordance with the Terms and Conditions applying to her plans, and because of that I can't uphold her complaint.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 17 December 2025.

Nigel Bracken  
**Ombudsman**