

complaint

Mr W complains that Bank of Scotland plc ("BoS") mis-sold him a personal pension plan. It did not explain a Market Value Reduction ("MVR") would apply if he took benefits early.

background

Mr W got advice from BoS in 1988 to contract out of the state earnings related pension scheme. National Insurance rebates would then be paid into a personal plan.

Mr W's rebates were invested in a with-profits fund. The plan was written to age 75 but benefits could be taken at state pension age. At the time this was 65. Section 16 of the plan terms and conditions confirmed that:

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

Section 17 of the terms and conditions says:

"(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;"

In 2014 Mr W turned 60. He wanted then to retire. But he discovered that a MVR would apply to his plan. Mr W complained about this to BoS. He said:

- he wasn't being treated fairly as a customer.
- the MVR was excessive. How could they sell a policy with such a penalty?
- the MVR was stopping him retiring.
- the MVR was not explained when he started the plan. Had it been he would not have started it.

BoS did not uphold Mr W's complaint. It said when Mr W started his plan the MVR would not have been an issue. It was not possible then to take contracted-out benefits before reaching state pension age.

BoS said it was satisfied the plan and fund invested in was suitable for Mr W at the time. So Mr W was treated fairly. He was given suitable advice.

Mr W did not agree. He referred his complaint to this service.

Our adjudicator agreed with BoS's findings. She said the MVR was within the terms and conditions of the plan. Recent changes to the law were not relevant to the MVR. It was the scheme rules that said an MVR would apply if benefits were taken before 65.

Mr W and his adviser did not agree with the adjudicator. Mr W maintains he was not told of the MVR. So the plan was mis-sold. Mr W and his adviser added that the language and terminology of the terms and conditions is hard to understand.

my findings

I have considered all the available evidence and arguments to decide a fair and reasonable outcome in the circumstances of this complaint.

And I have reached the same conclusions as the adjudicator for the same reasons.

The state retirement age for males when Mr W took out the plan was 65. The plan was set up in line with this. Taking benefits before 65 would therefore attract a MVR as set out in the terms and conditions. The MVR ensures that consumers leaving the fund early get only what they are entitled to; this is to ensure all plan holders are treated fairly over the duration of their investment.

Changes to the law mean that Mr W is now able to take retirement benefits earlier than 65. But that does not mean he is entitled to take unimpaired benefits at an earlier date. The law simply sets out the parameters of what *can* be done. But for Mr W to take benefits earlier with no MVR the plan's terms and conditions would have to be changed to allow this. In other words, the changes to the law did not affect or alter the plan's terms and conditions in respect of the MVR.

In this case early retirement is allowed as required by the changes to the law. But the plan's terms and conditions remain in force. These include that the *only* time that the plan would be MVR free is when Mr W reaches 65.

Mr W says this plan was mis-sold because he was not made aware of the MVR. Mr W and his adviser say that the MVR is set out in a way that is difficult to understand. I have some sympathy with this point. But at the time, the rules about what information and in what form it had to be given to investors were less stringent than those in force now. The information given to Mr W *is* difficult to understand. But it would not be fair or reasonable to apply standards now to plans sold in 1988. That would be using hindsight.

There is no paperwork about the advice given in 1988. So it cannot be known exactly what was discussed between Mr W and the adviser. But he would have been given a guide to his plan. Whilst I know Section 17 of this does not *explicitly* refer to a MVR, it does say that if the plan is cancelled before the consumer reaches 65 a plan valuation would be conducted by an actuary. I am satisfied that as a valuation exercise is mentioned an MVR can also apply not only if cancellation happens but, by implication, if benefits are taken before 65.

I do not think the sale of the plan was reliant on an explanation of the MVR. When Mr W started this plan the option to take benefits *before* 65 was not available. I agree with the adjudicator that this is why the terms and conditions do not directly address what happens if benefits are taken before 65. It could not have been foreseen that the law would change to allow benefits to be taken before 65.

So I do not think it unreasonable that this matter was not discussed with Mr W when he took out the plan. But in any event, I am satisfied that the scheme rules implicitly allow an MVR to apply if benefits are taken before 65.

For the reasons set out above it would not be fair or reasonable to say that the policy was mis-sold.

my final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr W to accept or reject my decision before 6 November 2015.

Terry Connor
ombudsman