

The complaint

Mr M complains that Clydesdale Bank Plc trading as Virgin Money (Virgin) didn't make him aware of the financial problems he could suffer in retirement as a result of the income benefits arising from his personal pension plan (PPP). He says that he hasn't benefitted from the proceeds of the PPP as he's now required to pay them towards his rent and isn't now eligible for certain means tested state benefits.

What happened

In March 1990 Mr M says he met with an adviser from Virgin at his place of work and agreed to contract out of the state earnings related pension scheme (SERPS) and also to make personal contributions to a PPP.

In 2005 Mr M took his benefits from one of the plans which provided a tax free cash (TFC) sum of £252.59 and an annual pension of £22.44. In 2007 he took the benefits from the other plan and received TFC of £2,413.17 and an income of £31.21.

In 2020 Mr M qualified for his state pension but following discussions with his local council found that the overall income he then received meant he was required to contribute towards his rent. He spoke with the annuity provider to get the income payments converted to a lump sum payment as he had been informed this wouldn't require him to contribute towards his rent. But although the provider was able to make a lump sum payment for one of the plans it couldn't accommodate him for the other one due to his medical history.

So Mr M brought a complaint to us. We said that as the decision to pay the annuities as a lump sum was at the discretion of the provider, we couldn't compel them to make a lump sum payment for the second plan. Mr M then suggested that he'd been "mis sold" the plan as he wasn't made aware of the implications of the pension income on his benefits. So he was advised to complain against Virgin – who had given the original advice. But Virgin said his complaint about its advice in 1990 had been brought too late because he ought reasonably to have been aware that the advice might have been unsuitable when it sent him letters in 1995 and 1996 offering to review the advice under the banner of the industry wide pensions review.

Mr M didn't think this was fair, so he brought his complaint to us where one of our investigators looked into the matter. She didn't think this was a complaint we could consider. She said that as the sale of the PPP had taken place more than six years ago, and Mr M had been sent – and received letters to review his pension more than three years before he complained – his complaint had been brought outside of the prescribed time limits set by the regulator.

Mr M didn't agree. He said he'd only been aware of these issues when he experienced problems with the council two years ago. He said he couldn't have been expected to be aware of them based on the letters that were sent to him thirty years or so ago. He says he wasn't ever told that the council could take his pension from him – so he couldn't be aware of that possibility and the letters wouldn't have alerted him to that fact. He said he wanted his complaint to be referred to an ombudsman.

The investigator said that the letters advised him about the general suitability of the sale so ought to have made him aware of the matter he's now complaining about – namely that the sale of the pension might not have been appropriate for him.

So the matter was passed to me to review.

My provisional decision

In my provisional I reached the conclusion that we could in fact look at Mr M's complaint – but that it shouldn't be upheld. I made the following points in support of my findings:

- I thought the main thrust of Mr M's complaint had become somewhat "lost" so I wanted to simplify matters. The first stage of the simplification was to decide that it was a complaint we could consider.
- One of our investigators had suggested that Mr M could complain about the advice around his annuity sales from 2005 and 2007 – but this led to him making a complaint about the original advice to take out the PPP. But the annuity sales had been carried out on an "execution only" basis through the annuity provider, so I wanted to make Mr M aware that any complaint about advice from 2005 or 2007 would be unlikely to be upheld as no advice was given to him – and Virgin wasn't involved in that process either.
- So I went on to consider Mr M's complaint that Virgin didn't make him aware of the post retirement financial implications in its original advice from 1990. But I didn't think Virgin had failed to make him aware or had done anything wrong.
- I didn't think it would have been possible for Virgin's adviser to have been aware of the situation Mr M would find himself in after he drew his state benefits in 2020. I didn't think it was fair to expect the adviser to draw Mr M's attention to what was a quite specific possible situation.
- I wouldn't have expected the adviser to explain all the possible risks and consequences of taking out the PPP, but given they are designed to provide greater income – in retirement, beyond the pension paid by the state, I didn't think that the effect on the other benefits that someone might receive in the future would reasonably have factored into such discussions.
- I also took into account that it was only the combined overall income Mr M received in 2020 that caused his problems, and it wouldn't have been reasonable to expect the adviser to have foreseen that.

Responses to my provisional decision

Virgin said that it unconditionally accepted this was a complaint we could consider. It also said it accepted the provisional findings with regards to the merits of the complaint.

Mr M however didn't agree. He said he didn't understand how we could decide to look into his complaint but then fail to uphold it. He reiterated his view that the adviser ought to have known how his benefits would be affected – given that he lived in council housing. He said he had now suffered a financial loss from taking out the PPP and wouldn't have taken it out if he'd been aware of the potential for losing the proceeds to a third party. He says his state benefits have also been affected.

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.

And having carefully considered both parties further submissions I see no reason to depart from my provisional findings. I know Mr M will remain disappointed with this outcome and I have some sympathy for the position that he now finds himself in. But I don't think Virgin has done anything wrong here, so I'll explain my reasons in an effort to give Mr M some closure to this matter.

In my provisional decision I said I thought we could consider this complaint - which was a different interpretation to that of our investigator. But Virgin has accepted that we can look at Mr M's complaint so that's what my decision will concentrate on here.

The advice in 2005 and 2007

In 2005 and 2007 Mr M decided to access the benefits of his PPPs by taking TFC and residual annuities. So it could be argued that at these times it would have been appropriate for Mr M to have been advised of how drawing those benefits might affect other areas of his finances – such as state benefits. And I think that what's our investigator alluded to when he suggested Mr M could complain about the *annuity* advice.

However, this was interpreted as being the original advice to take out the PPP, which is why a complaint was made to Virgin about the suitability of its advice. But for clarity – and to give Mr M further closure about the scope of his complaint, I think I need to confirm what happened in 2005 and 2007. On these dates Mr M himself asked to draw the benefits of his PPPs. He approached the providers – not Virgin - directly and didn't seek or receive any advice. He simply requested to take the TFC and annuities on offer. So it would be unlikely that if Mr M did make any complaint about the events of 2005 and 2007 it would be upheld. And, in any case, the complaint couldn't be made against Virgin because it wasn't involved in that process at all.

So I've gone on to consider the broader complaint which was made against Virgin concerning the original advice it gave Mr M in 1990. The complaint is specifically that Mr M wasn't made aware by Virgin of the post retirement financial implications when he took out the PPP.

The 1990 advice

Mr M says that Virgin ought to have made him aware of the possibility that, when he accessed his fund at retirement, the proceeds could affect his entitlement to state benefits and, in particular, the level of subsidy he received on the rent of his council property. He says if he'd been given this information at the start he wouldn't have taken out the PPP.

As this advice was given over 30 years ago there's now little evidence remaining which confirms what Mr M was told in 1990 or what was discussed. And of course, the requirements to record and document advice from that time were very different to what they are now. So it's not possible for me to confirm what was said either in terms of general information or more specific risks and warnings that might apply to Mr M.

But I can confirm that, as Mr M himself accepted, that it wouldn't have been possible to know the position that Mr M would find himself in 30 years later.

So, as it wouldn't have been possible for the adviser to have been aware of the scenario that arose later when he made his recommendation in 1990, it wouldn't be reasonable to have expected him to discuss that very specific and individual (to Mr M) outcome. What I would have expected the adviser to have done was to make a general recommendation to contract out of SERPS and make additional contributions to a PPP – giving a high level overview of

the general aims and objectives of the plan - and there's nothing to suggest that he didn't do that here.

I wouldn't have expected him to tell Mr M about every possible consequence of taking out the plan but, I would have expected him to confirm that its purpose was to provide enhanced pension provision in retirement, beyond the pension paid by the state. So I don't think it would have been reasonable for the adviser to have discussed the effect on the other benefits that someone might receive in the future.

I understand Mr M's concern that he wouldn't have gone ahead with the plan if he'd known the consequences as they are today, but I don't think it's fair to say that the adviser should have discussed them in 1990, especially when neither he nor Mr M would have had any idea about the scenario that did unfold in 2020. Indeed, the problem that Mr M faced in 2020 wasn't caused solely by the existing annuities but by the addition of Mr M's state pension. That was an unfortunate situation, but I don't think it's reasonable to now suggest that Virgin's adviser could have foreseen what was going to happen and warned Mr M about the consequences back in 1990.

As I concluded in my provisional decision, on the basis of the objective of a PPP – to enhance an individual's income in retirement– it wouldn't have been a reasonable expectation at the time of the advice for Virgin to have looked ahead to a potential situation of such additional income meaning that Mr M's access to benefits was in some way restricted.

My final decision

For the reasons that I've given I don't uphold Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 28 December 2023.

Keith Lawrence
Ombudsman