PO-28689

Ombudsman's Determination

Applicant	Mr M
Scheme	The Semex Group Personal Pension Plan (**the Plan**)
Respondent	Prudential Assurance Limited (**Prudential**)

Outcome

1. I do not uphold Mr M's complaint and no further action is required by Prudential.

Complaint summary

2. Mr M has complained that he was not informed by Prudential, his employer, or the selling agent, that charges would be deducted from his pension fund. He says that Prudential should have had a system in place to ensure he was fully informed of the charges that would be applied to his pension fund.

3. He also says that Prudential should not have allowed excessive or disproportionate charges to be applied to his pension fund. Further, the annual charges should have been made clear within the annual statements sent to him by Prudential.

Background information, including submissions from the parties

4. Mr M's employer offered Plan membership to employees and Mr M joined in December 1995. The employer had engaged a firm of independent financial advisers (**the IFA**) to act as agents on its behalf. The role of the IFA was to provide appropriate initial and ongoing advice to members of the Plan, which included providing the necessary paperwork, brochures, and illustrations, to assist with the application process.

5. The IFA no longer exists, having merged with another organisation. For this reason, there is very little contemporaneous paperwork that would assist in establishing the facts with greater certainty.

6. The IFA wrote to Mr M on 15 January 1996, to confirm that:-

   - He had been enrolled in the Plan with effect from 1 December 1995.

- A Member's Booklet (ref P290) was enclosed but a copy of the Plan Rules was also available on request.
- Mr M's normal retirement date (**NRD**) would be his 60th birthday, which is in June 2023.
- The Plan would be invested in combined unitised investment linked and with-profits funds.
- The regular monthly contribution would be 10.5% of his Scheme earnings, which equated to an initial monthly premium of £82.12. Of this amount, Mr M would pay 3.5% of his Scheme earnings per month, being an initial monthly contribution of £27.71. His employer would pay the balance of 7% of Scheme earnings, being an initial monthly contribution of £54.41.
- Contracted-Out National Insurance contributions would apply on salary between Lower Earnings level and Upper Earnings level. Full details of contracting out would be available in the Member's Booklet.

7. The selected product provider was Prudential (formerly Scottish Amicable), who subsequently sent Mr M annual statements showing the Plan's performance.

8. There appeared to be no mention of charges in the welcome letter and in the Personalised Member's booklet which had been given to Mr M by the IFA.

9. However, according to the Technical Guide of October 1996, charges were as follows:-

One-off installation charge	£28.50 below 50 scheme members	nil if there are 50+ scheme members
Annual member charge	£25.80 for between 1 and 99 active members £21.60 for 100 to 199 active members £21.60 for 200+ active members	
Bid and offer spread	5% for with profits funds	
Annual fund management charge for investment funds (not with profits)	1.15% of the value of units held, reducing after five years to 0.75%	
Annual management charge for with profits	Implicit – that is, not expressed, but taken into consideration when	

	declaring annual bonuses	
Market Value Adjuster	Possible on with profits funds only, on fund switch or surrender	Never applied on death or maturity (at Mr M's 60th birthday)
Fund Switches	One free per year then £25 per switch	

10. Prudential stated that Scottish Amicable took the decision to reduce charges unilaterally across its group personal pension range in January 2001. In its Repricing Flyer these were shown as follows:-

    - The bid and offer spread was removed entirely from all contributions paid into the Plan after 6 April 2001.
    - Any allocation rates below 100% net of the bid and offer spread would be increased to 100%.
    - Separate policy fees would no longer apply.
    - No switching charges would be applied.

11. The Repricing Flyer confirmed that benefit statements from April 2001 would reflect the new charging structure.

12. Mr M became aware of the charges applied to the Plan in November 2018. He asked Prudential to provide a unit statement showing all deductions from his Plan from inception.

13. He complained to Prudential who responded by letter on 14 January 2019. Prudential explained that it was only the product provider; the IFA who gave the advice should respond to the complaint. Prudential gave Mr M contact details of the firm with which the IFA had merged. It also sent to that firm a copy of his complaint and associated paperwork.

14. Mr M did not accept this outcome and pursued his complaint with my Office.

Adjudicator's Opinion

15. Mr M's complaint was considered by one of our Adjudicators who concluded that no further action was required by Prudential. The Adjudicator's findings are summarised below:-

    - The Adjudicator had seen no mention of charges in the welcome letter or in the Personalised Member's booklet which had been given to Mr M by the IFA. Under the regulatory regime prevailing in 1995 (the Personal Investment Authority), when Mr M joined the Plan, mandatory information (without which new applications could not be processed) was provided to all applicants for pension and life assurance business. This included a key features brochure, personalised key features wrap and a personalised key features illustration, describing both the charges and the effects of those charges on Mr M's investment returns.

- Prudential provided the necessary documents to the IFA whose responsibility it was to explain them to Mr M. Prudential had played no further part in the advice process. It was not responsible for the advice given by the IFA, nor for ensuring that the IFA provided copies of the key features documentation to Mr M.

- Prudential, as the product provider, was only responsible for providing and managing the pension vehicle into which Mr M's employee and employer contributions were paid. It would be unrealistic to expect Prudential to run its funds and administer the Plan free of charge.

- The Adjudicator noted Mr M's contention that Prudential should have set out the charges in the annual statements. However, there was no regulatory requirement for it to do so. Prudential was entitled to make decisions about charging, including whether, or to what extent, it disclosed them on annual statements.

- In respect of the information supplied about charges, the Adjudicator considered the information provided by both sides. She was of the view that the charges were broadly in line with the charges applied by other pension providers to similar products. Prudential had done nothing wrong in charging for the service provided to Mr M from the outset.

- Mr M had been a Plan member since 1995, and had the opportunity each year since then to examine its progress. He could have obtained a copy of the full Plan Rules and sought a meeting with the IFA to ensure that he was fully informed about the Plan, including how much it was costing and who was meeting that cost.

- Mr M may be able to raise a complaint with his employer and may also be able to pursue a complaint about the IFA with the Financial Ombudsman Service.

16. Mr M did not accept the Adjudicator's Opinion, contending that much of the information supplied by Prudential in the case file was from a later time than his joining date. He believed that if Prudential could not supply copies from the relevant date, the complaint should be upheld. .

17. The complaint was passed to me to consider. Mr M provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the main points made by Mr M for completeness.

Ombudsman's decision

18. Mr M's employer set up this Plan and engaged the services of an IFA to advise and assist Mr M, both in relation to joining the Plan, and to offer ongoing reviews and assistance. The responsibility for ensuring Mr M had all the salient information so that he could reach an informed decision about joining the Plan, lay with the IFA, who provided an advice letter together with key features literature. It was for Mr M to decide, after receiving such information and advice from the IFA, whether or not he wanted to join the Plan.

19. Prudential is the Plan Administrator. It had no responsibility to advise him. It also had no responsibility to oversee the IFA's actions. Prudential has provided regular statements to Mr M and has discharged its responsibilities to him in accordance with the prevailing Disclosure Regulations.

20. Having reviewed the papers, while I can see that the personalised Members' Booklet provided by Mr M appears to mention nothing specific about charges, I note the IFA letter directs him to the full Plan Rules which were available on request. Mr M had the opportunity to request a copy of those rules. The key features documents would also have contained charges information. It is therefore reasonable to infer from the evidence that he could have learned the correct position with regard to charges much sooner than he did.

21. I am satisfied that Mr M was adequately informed by Prudential that it would charge him for administering the Plan.

22. I note Mr M's contention that the case should be upheld because Prudential had been unable to provide all the contemporaneous information, and had instead substituted information from a later year. I agree with the Adjudicator that there is no regulatory requirement for product providers to keep product literature indefinitely. Prudential's inability to provide contemporary information is not a sufficient reason for upholding the complaint.

23. In respect of charges, I have considered these and agree with the Adjudicator that they appear to be in line with industry-wide charges for similar products. Prudential has done nothing wrong in charging Mr M for its service.

24. I do not uphold Mr M's complaint.

Anthony Arter

Pensions Ombudsman
14 May 2020