

## Ombudsman's Determination

Applicant	Mr A
Scheme	Abbey Life Personal Pension Plan ( <b>the Plan</b> )
Respondents	Abbey Life ( <b>AL</b> )

## Outcome

1. I do not uphold Mr A's complaint and no further action is required by AL.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mr A has complained about the high fee AL will charge him if he transfers the benefits in the Plan into his Self-Invested Personal Pension (**SIPP**) before his selected retirement date.
4. Mr A complained that it was not made clear to him at the time he set up the Plan how the transfer fee would be calculated, and because AL will not agree to lower it, his funds are stuck in a poorly performing plan where his investment opportunities are limited.

## Background information, including submissions from the parties

5. On 1 March 1985, Mr A started employment with SERCO, and subsequently joined the SERCO Occupational Pension Scheme (**the Scheme**).
6. Mr A subsequently sought independent financial advice from AL, who advised him to leave the Scheme, transfer his accrued benefits to AL and use them to set up the Plan. Mr A accepted this advice in good faith.
7. On 22 September 1988, Mr A opted out of the Scheme and set up the Plan. At this point Mr A was provided with all the relevant Plan literature, in particular, the Plan's terms & conditions and a document entitled the Leading Edge Pensions Brochure (**the Brochure**). The Plan's normal retirement age is 60.
8. With regard to transfer charges, the Plan's terms and conditions, under the heading of 'Conversion of Funds', provides that a policyholder may at any time before their

benefits become payable, cancel the funds in order to relocate them to a new provider, but that the payable funds:

*“...shall be reduced by an administration charge of such an amount as may be levied under the Provider’s practice in force at the date of notification.”*

9. In addition, the Brochure also states that a policyholder may transfer their benefits to another provider or plan, but that:

*“...the amount available will be calculated according to a formula set by our Actuary at the time. This will generally be less than the ongoing value.”*

10. On 25 October 1989, Mr A’s Scheme benefits were transferred to the Plan.
11. On 22 February 1991, Mr A made his last contribution into the Plan and ceased payments after that date. Mr A left employment with SERCO on 13 March that year.
12. In 2001, Mr A brought a complaint to AL regarding the poor advice he had received to opt out of the Scheme and transfer his accrued benefits to set up the Plan.
13. On 15 June 2001, AL upheld Mr A’s complaint on the mis-selling of the Plan and made an offer of compensation. Mr A was informed he could appeal the decision to the Senior Manager Pensions Review, and was given referral rights to the Financial Ombudsman Service (**FOS**), should he be dissatisfied with the compensation offered in settlement of his complaint.
14. On 22 June, Mr A signed and returned the form accepting AL’s compensation offer in settlement of his complaint. By doing so, Mr A agreed that the compensation amount awarded settled all existing and future claims regarding the mis-selling of the Plan. He also agreed that the offer acted as compensation for any future charges relating to the Plan.
15. During 2013, Mr A set up a SIPP with the intention of transferring the value of all his accrued pension benefits, held in a number of plans, and combine them in his SIPP.
16. Mr A subsequently contacted all his providers to obtain transfer quotes for each of his plans.
17. AL supplied Mr A with a transfer quote for the Plan which included the provision for a transfer fee to be deducted in the event that Mr A elected to proceed with the transfer. AL advised Mr A that the transfer fee would be in the region of £4000, Mr A felt this was excessive and declined to proceed with the transfer.
18. On 24 October 2013, Mr A telephoned AL to complain about the amount of transfer charge that would be levied in the event that he proceeded to transfer his benefits out of the Plan before his selected retirement date.
19. On 21 November 2013, AL provided Mr A with a response to his complaint. The letter briefly summarised information regarding all the policies Mr A had with AL,

particularly the previous complaint raised in relation to the mis-selling of the Plan. AL explained that the compensation amount offered and accepted in 2001 was inclusive of all future charges and Mr A had, therefore, already been compensated for the transfer charge. AL did not uphold Mr A's complaint.

20. On 29 November 2013, Mr A made a telephone call to AL to advise them that he did not wish to pursue his complaint any further.
21. On 12 December 2013, AL wrote to Mr A, acknowledging his telephone call and confirming that his complaint file had been closed. AL provided Mr A with referral rights to FOS, should he nevertheless wish to make a complaint to them about this matter.
22. On 21 February 2014, Mr A telephoned AL to further complain about the charge that would be applied if he elected to transfer his benefits to another provider before his selected retirement date.
23. On 25 February 2014, AL wrote to Mr A in response to his phone call, confirming that this complaint had already been investigated and referred him to their letters of 21 November and 12 December (copies of which were enclosed). AL stated in this letter that they had nothing further to add regarding the issue, and again referred Mr A to the FOS for an independent review if he remained dissatisfied.
24. On 13 June 2015, Mr A emailed this service complaining that the AL's decision regarding closure of the Asia Pacific Fund had forced him to transfer into another Fund. Mr A also enquired as to what action he could take against AL to release his funds from the Plan without a transfer charge being applied. He was advised to contact The Pensions Advisory Service (**TPAS**).
25. On 17 June 2015, Mr A wrote to TPAS setting out his complaint.
26. In response, TPAS recommended Mr A to first put his complaint in writing to AL and that only after completing AL's formal complaints procedure should he contact the FOS. TPAS instructed Mr A to request a clear explanation regarding the transfer charge, but added that:

*"... It may be the way the policy contract is written. If that is the case, as it is likely to be, then I'm afraid there is very little you can do about it as those may well be the terms of the contract that you signed up to when you took the policy out."*
27. On 3 July 2015, Mr A wrote to AL to formally complain about the recent closure of their Asia Pacific Fund, and to further complain about the transfer charge which would be levied in the event that he elected to transfer his benefits to another provider before his selected retirement date.
28. On 28 August 2015, AL responded to Mr A's complaint. They again referred Mr A to the contents of their letter of 21 November 2013, which had explained why the transfer charge would apply, and enclosed a copy of this. They also enclosed a copy

of the Brochure, a copy of which had been provided to Mr A at the point he set up the Plan, which stated there would be a reduction in fund value if the Plan was transferred. AL also gave a response regarding the closure of some of their funds and referred Mr A to FOS if he wished to complain further about this matter.

29. On 5 September 2015, Mr A completed and sent an application form to FOS requesting an investigation into his complaints. FOS subsequently referred Mr A to this service.

### **Adjudicator's Opinion**

30. Mr A's complaint was considered by one of our Adjudicators who concluded that no further action was required by AL. The Adjudicator's findings are summarised briefly below:
- Mr A was supplied with a copy of the relevant terms & conditions upon setting up the Plan. This document advised that if he chose to transfer his funds before his selected retirement date, he would be subject to a transfer charge.
  - Mr A was also supplied with a copy of the Plan brochure, which advises that any transfer charges are "calculated according to a formula set by the Actuary at the time".
  - At the time when the Plan was set up, AL were under no obligation to disclose the formula used to calculate the transfer charge.
  - The transfer charge that would be applied has been calculated according to the appropriate formula and is provided for in the Plan's terms & conditions.
31. Mr A did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr A provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr A for completeness.

### **Ombudsman's decision**

32. As I understand matters, Mr A does not dispute that the Plan's terms and conditions provide for a transfer charge to be levied in the event that he elects to transfer his benefits to another provider before his selected retirement date. Rather, he complains that the transfer charge is too high and was not clearly set out in the documentation provided to him at the time he set up the Plan.
33. While I have some sympathy for Mr A's argument, in that the exact formula that would be used to calculate the applicable transfer charge was not clearly set out in the documentation provided to Mr A at the point he set up the Plan, the existence of a transfer charge was made clear in this documentation.

34. As I am sure Mr A will appreciate, in 1988 when he set up the Plan there was no obligation on providers to disclose the means by which they would calculate a transfer charge. Indeed, the whole concept of transfer values was fairly new at this point and the legislation which sets out the information providers are now obliged to disclose did not come into force until a number of years later.
35. Having carefully considered all the available evidence, I am satisfied that the documentation provided to Mr A at the point he set up the Plan clearly detailed that a charge would be levied in the event that he elected to transfer his benefits to another provider before his selected retirement date. Given that there was no obligation on AL to disclose the formula in the documentation provided to Mr A at the point he set up the Plan, I do not consider AL has acted with maladministration by not including details of the formula that would be used.
36. For the sake of completeness, I have confirmed with AL that the transfer charge applicable in Mr A's case is calculated as being the sum of the annual management charge, currently 0.75% per annum, and the annual management by deduction (calculated based on the average contribution paid into the Plan), rolled up to the power of the remaining term.
37. In terms of Mr A's complaint that the transfer charge is unreasonably high, there is little I can add to the explanation contained in the Opinion on this point. While I can well understand why Mr A would prefer it if the transfer charge were less, this does not mean that the proposed charge as it stands is either unreasonable or unfair. The Plan's term and conditions provide that any transfer charge levied will be calculated by AL, using a formula set by their Actuary. AL has confirmed that the proposed transfer charge meets both of these tests and, as such, I am satisfied that they have not acted contrary to the requirements of the Plan's terms and condition in this regard.
38. Therefore, I do not uphold Mr A's complaint.

**Anthony Arter**

Pensions Ombudsman  
14 July 2016