

The complaint

Mr C complains that he first became aware that he was being charged a 7% Annual Management Charge (AMC) for his personal pension policy with ReAssure Limited (ReAssure) when he received his 2019 Annual Pensions Statement. He says he wasn't given this information when the pension was sold to him in 1994. Further, he thinks it unfair that he has been paying this level of charges for so long, as he wasn't told these costs would apply every year. Mr C says he has lost out financially because he wouldn't have agreed to take out a pension with this level of charges.

What happened

Mr C took out a pension with ReAssure in 1994. The policy was initially set up with a monthly contribution of £30 each month. Mr C says he was told at the time that some commission would be taken out to pay for its set-up.

Mr C said he first became aware that he was paying a high amount in charges when he received his 2019 pension statement. This showed that he'd paid in £749.34 during 2018-19 ((including tax relief) and that the charges out of the policy were £267.66. Mr C complained to ReAssure about the level of charges.

ReAssure didn't uphold Mr C's complaint. They issued two separate final response letters to different aspects of his complaint. The 10 March 2020 response covered the AMC and Mr C's complaint that they weren't displayed on his annual statements until 2019. ReAssure said that their charges weren't previously displayed in their letters, so it's likely Mr C hadn't noticed the AMC before. They said they'd recently changed the way they provided information to their policyholders. And that their letters and statements were now much clearer so that their customers got all the relevant information annually. They also said that the terms and conditions of the policy allowed the deduction of such charges.

In their 16 March 2020 final response, ReAssure considered Mr C's complaint about the level of charges he'd been paying, without knowledge of the charges on the policy. They also considered his point that statements before 2019 hadn't been clear about how much he'd been charged. And that he'd paid into his policy for nearly 30 years but no one had advised him to switch to a policy with lower charges or told him how much he'd been paying. They didn't uphold his complaint. They said they felt that the policy had been suitable for Mr C's needs at the time of the sale. They also said that they'd recently detailed the charges on annual statements as they were trying to be more transparent with statements to make it clear what customers were being charged for. They said that the charges had always been on the policy and that they were clearly detailed within the terms and conditions.

Unhappy with ReAssure's response, Mr C brought his complaint to this service. Our investigator looked into it and issued a view in July 2021 upholding Mr C's complaint on its merits. He said he hadn't been able to locate any details of how much the charges on Mr C's policy would be from the documentation ReAssure had supplied for that purpose. Therefore he couldn't see that Mr C had been provided with enough information about the charges to be able to make an informed decision about the policy. He felt that Mr C had been made to pay significant charges that he was unaware of from the start of the policy in late 1994 to the

point when he discovered the level of charges after receiving the 2019 annual statement. He felt that as Mr C wasn't aware of the fees, it wasn't fair for them to be charged. He recommended that the AMC should be refunded. And that as these would've remained within the pension he also felt that the performance of the pension from the point of each charge to the point of settlement should be reviewed and any growth that had occurred should be applied accordingly. He also felt that ReAssure should add 8% simple interest per annum to the refunds and the growth.

ReAssure didn't agree with this view and said Mr C's complaint had been out of time. In relation to the three-year part of this service's rules, ReAssure said that Mr C ought to have been reasonably aware that he was paying charges because these were referred to in his 2014 annual statement.

In his August 2021 jurisdiction view, our investigator felt that the complaint was outside of this service's "six and three" rule because the 24 May 2014 annual statement had clearly laid out the percentage charged to each type of unit within his pension. So our investigator felt that Mr C ought reasonably to have known he had cause for complaint from this time. Therefore he would've had until 24 May 2017 to complain.

Mr C didn't accept our investigator's view. In summary, he said:

- His 2013 statement and others before that hadn't mentioned any charges.
- Statements after 2014 also didn't refer to any charges being deducted, until the 2019 statement. After he'd received that statement, Mr C made his complaint.
- Mr C didn't remember seeing the 2014 statement and didn't have a copy of it. He may not have received it.
- He was wrongly informed about the charges on the policy.

Mr C's complaint was reviewed by an ombudsman so they could consider whether this service had jurisdiction to deal with his complaint.

In February 2022, the ombudsman issued his provisional decision in which he felt that the complaint was one that this service could consider the merits of. He didn't consider that Mr C had been given enough information to realise what the charges on his pension policy were. He said that the 2014 statement didn't make specific reference to the amount of charges that had been taken from the policy over the year. The ombudsman considered that it wasn't until Mr C received the 29 May 2019 annual statement, when charges were clearly outlined, that he ought reasonably to have known he had cause for complaint. And that as he had complained to ReAssure within three years of the date of the 2019 annual statement, his complaint was in this service's jurisdiction.

ReAssure disagreed with the ombudsman's provisional decision. They felt that the 2015 statement explained what funds Mr C's policy was invested in. And gave information about where charges could've been accessed.

The ombudsman issued his final jurisdiction decision in March 2022. He still felt the complaint was in this service's jurisdiction. He didn't agree with ReAssure that the 2015 statement provided sufficiently clear information about charges so that Mr C ought reasonably to have known he had cause for complaint from this time.

Our investigator asked ReAssure whether or not they accepted his July 2021 merits view. ReAssure said that they didn't. They said that Mr C had been provided with the Terms and

Conditions of his policy at the time of sale. They felt these provided details of the charges applicable to his policy. They also felt that Mr C had received a number of Annual Statements which had confirmed those charges. ReAssure agreed that both the Terms and Conditions and the Annual Statements weren't as explicit as they would be in 2022. But they still felt that they would've been compliant documents at that time. They said that we couldn't use hindsight to determine the quality of the documentation which was issued as it was correct at the time in question.

Mr C told this service in January 2022 that his policy is still active. And that he was charged a further £279 in 2021 after contributing £634 plus £158 added tax relief.

As agreement couldn't be reached, the complaint came to me for a review.

I issued my provisional decision on 10 May 2022. It said:

I've considered all the evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I intend to uphold it. I agree with our investigator that there was an historical lack of clarity about the fees Mr C was required to pay. But I don't agree with our investigator that this means it wasn't fair for them to be charged at all. I'll explain why.

Our investigator felt that as Mr C wasn't aware of the fees, it wasn't fair for them to be charged. But from what I've seen, Mr C was given information that there would be different charges between the two different types of units in his pension plan – the capital units and the accumulation units. I'm not persuaded that it was clear exactly what those charges would be. But I am satisfied that Mr C was given information that showed that he would pay higher charges on capital units than on accumulation units.

Accumulation units and initial/capital units

In some older plans, any regular contributions in early years may've been used to buy 'initial' or 'capital' units. These attracted a higher annual charge than 'accumulation' units, which were bought with the contributions later on. The reason is that the provider has usually paid an initial commission or salary to the adviser which assumes that the consumer would pay into their plan for the whole term up to retirement, whether the consumer actually does so or not. So the provider recoups most of the costs from the premiums paid into the plan in the early years.

Mr C said he remembered being told at the point of sale that the charges would be a bit higher for the first year as a commission, but that he didn't understand the high charges would continue. I can't know what was said at point of sale, but I can consider the documentation ReAssure said they gave Mr C at the time.

ReAssure said that they would've supplied the following documents at the time of sale:

- *The Customer Fact Find*
- *The Pensions Application Form*
- *The Terms and Conditions of the Policy*

Having carefully reviewed these documents, I've not found that they stated what level of charges Mr C would be paying, or how long he would be paying at that level for.

ReAssure also sent this service a copy of the earliest Key Features Document they had for the policy in question. While this document did state that the initial units would attract an additional management charge of 6% each year, I've seen no evidence to show that Mr C was ever given this document.

In Mr C's case, his 2014 and 2015 statement showed the split between the accumulation units and the capital units. His capital units – which attracted the additional charge – were less than 3% of the total value shown on both statements. Mr C's 2019 statement didn't show the split of the accumulation and capital units, just the total. But the total amount charged was shown as £267.66. This amount was just over 1% of the total value of the fund. Therefore it should be noted that although the capital units did incur a higher charge than the accumulation units, Mr C held a very low proportion of capital units in his plan. So the impact of the higher capital unit charge was relatively low, and decreasing over time.

ReAssure said that the 2014 annual statement had outlined the higher charges for initial units. This stated:

Unit Type Notes

Refer to your policy conditions for details of annual management charges that may apply to your policy.

1) Initial Units were allocated in respect of contributions paid in the first year or first two years. The fund value of these units is subject to an additional annual management charge of either 3.5% or 6%.

2) Accumulation Units are the standard type of units allocated in respect of contributions and are subject to an annual management charge of normally no more than 1% of the fund value.

3) Bonus Units do not have a value until the date specified in the terms and conditions. If you intend to seek financial advice, please be aware your financial adviser may charge you for their services.

Although I agree that this statement shows higher charges for initial units, it doesn't make specific reference to the amount of charges taken from Mr C's policy during the year. So he wouldn't have known whether he was being charged an additional AMC of 3.5% each year, or 6% each year. But I am satisfied that he would've known an additional AMC was being levied on initial units.

Mr C said that the charges weren't clearly stated every year – at least until 2019 when the amount he'd been charged was given. He said he doesn't remember seeing the 2014 statement. And that if he had he would've complained.

Although I acknowledge that Mr C doesn't remember receiving the 2014 annual statement, I consider that it's more likely than not that he did receive it. I say this because it was addressed to the same place as the 2015 statement, which Mr C did receive. I'm satisfied that the 2014 statement contained information that Mr C was either paying an additional 3.5% AMC or an additional 6% AMC, but that he hadn't been given other information to help him work out which he was paying.

Mr C is currently paying a little over 1% AMC in total on his pension plan. This is because the impact of the additional AMC on his pension plan has reduced over time as a higher and higher proportion of the units held are accumulation units, rather than capital units. But, from what I've seen, ReAssure never clearly explained to him what the additional charge on

accumulation units would be. They only ever stated that the additional charge might be 3.5% or 6%.

I acknowledge that ReAssure consider that due to the age of the policy, the Terms and Conditions would've evolved over recent years, as would the Annual Statements, and that they would both now provide clearer and more explicit information. They said that we can't use hindsight as a means to determine the quality of the documentation which was issued as it was correct at the time in question. But I'm not persuaded that this means it was reasonable for Mr C to have never been clearly told the level of the additional AMC he would be charged on capital units.

As there was a lack of clarity over the level of the additional AMC that Mr C was being charged on his capital units, I don't consider that it was fair to have charged Mr C the higher additional rate of 6% each year. Therefore I intend to uphold the complaint.

Response to my provisional decision

ReAssure reiterated that at the time of sale, they'd provided Mr C with Terms and Conditions which provided details of the charges applicable to his policy. And they'd sent him Annual Statements which they said also confirmed the charges. They acknowledged that both sets of documentation weren't as explicit as they would be in 2022. But they felt they would've been compliant documents at the time of the sale.

ReAssure said that we can't use hindsight as a means of determining the quality of the documentation which was issued as it was correct at the time in question. Therefore, they maintained that the paperwork they'd provided to Mr C had always been compliant. And they felt it would be inappropriate to apply today's standards to correspondence issued over the years.

Mr C reiterated that no one in their right mind would agree to pay such high annual management charges. And if he had been aware that he was going to be paying such high charges, he would've stopped contributing long ago.

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.

I've already acknowledged in my provisional decision ReAssure's points about both the Terms and Conditions, and the Annual Statements, and how they would've evolved over recent years. I agree that we would now expect them to provide clearer and more explicit information than was historically the case. I've also already noted their point that we can't use hindsight to determine the quality of the documentation issued, given they felt it was correct at the time in question. But, I've not been able to find any details in the Terms and Conditions about the charges in Mr C's policy. And therefore I'm not persuaded that he was ever clearly told what level of additional AMC he would be charged on capital (initial) units. I acknowledge that the 2014 Annual Statement did clearly state that Mr C would either be paying 3.5% or 6% on capital (initial) units. But I'm still of the view that there was a lack of clarity over the level of the additional AMC that Mr C was being charged on those units. Therefore I'm still not persuaded that it was fair to have charged Mr C the higher additional rate of 6% each year. Therefore I remain of the view I set out in my provisional decision. And I uphold the complaint.

Putting things right

I consider that it would be fair to have charged Mr C the lower additional rate of 3.5% each year. As such, I require ReAssure Limited to calculate what the value of Mr C's plan would've been, at the date of my final decision, if the additional AMC on initial units had been 3.5% each year, instead of 6% each year. ReAssure Limited must then reinstate the value of Mr C's plan to that level.

My final decision

For the reasons given above, I uphold this complaint. ReAssure Limited must take the actions detailed in the "Putting things right" section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 28 June 2022.

Jo Occleshaw
Ombudsman