DRN-4698619

The complaint

Mr M complains about information provided to him by The Prudential Assurance Company Limited in relation to fees and charges on an endowment policy. He says a failure to provide accurate information has prevented him from managing his investment and taking decisions to mitigate poor performance.

What happened

Mr M has held an endowment policy with Prudential since 1999. Throughout the time he has held the policy, he has raised queries about the charges that were applied to his investment.

In October 2013, Prudential responded to a complaint made by Mr M in relation to not being provided with information he requested about the charges on his investment. This response provided a summary of the charges applied since the policy started. It referenced the mortality, critical illness, waiver of premium and policy charges. It also paid some compensation for the service provided. Mr M accepted the position and didn't pursue the complaint further at this time.

In June 2022, Mr M received a statement that provided a more detailed breakdown of the charges that had been applied in the year. He identified the main difference compared to the charges he had previously been told about was an Annual Management Charge (AMC) at £1,1027, which he said had not been included in any of the detailed charges analysis he had requested in the past.

Following this he raised a complaint. He was unhappy that despite his previous efforts to obtain clear information about charges applied to his policy he had now discovered the level of charges applied was higher than he was led to believe.

Prudential provided a response to the complaint. This explained the inclusion of an AMC on the funds held in Mr M's policy since it commenced. It said this charge is a percentage, so it would always increase as the fund value grows. It also said previous statements displayed this charge as an indicative percentage, but now they show a monetary amount. This change was to make the charges as transparent as possible.

Mr M remained unhappy with the response and raised further points in relation to the information he'd received.

Prudential sent a further response in December 2022. In summary it said:

- It accepted the information it had provided to Mr M in the past about charges had been inconsistent and incomplete.

- The additional fund charges are outlined in the policy literature and have been described to him in various correspondence since 1999. These charges were referred to as fund management charges and have recently been referred to as Annual Management Charges or AMC.

- The AMC of 0.75% is described in the policy literature and in correspondence issued since inception. It is expressed as a percentage and therefore the charge is relevant to the performance of the underlying fund.

- The 2022 statement confirms on page eight: “The annual management charge in the table above is an approximated value for this statement period only and may vary in the future, as explained in your product literature.”

- The monetary AMC amount shown on the statement is not deducted from the policy. It is not an explicit policy charge, as AMCs are deducted from the underlying With-Profits Fund. The charge has always charged pro-rata in line with the performance of the fund.

- The new information on the 2022 statement is intended to give an indication of the monetary charge to the overall fund but is not a deduction or charge from the policy and should not be factored into any assessment of past or future performance of the investment.

- To recognise the distress and inconvenience caused, it sent Mr M £250.

I issued a provisional decision in February 2024. This is what I said:

“Having reviewed the submissions made, it is clear to me Mr M has spent considerable time over a number of years seeking information about the charges that have been applied to his investment. At various points he has been provided with information by Prudential. The crux of his complaints relates to him believing he has been given inaccurate information and this has prevented him fully understanding the charges applied and taking action on his investment.

I’ve considered all the available evidence. Firstly, Prudential has sent a copy of the original Scottish Amicable policy document that explains the ‘Rules and Schedule’ of the product. This does have some information about charges. There is a section called ‘Table of Charges’ which confirms, amongst other things, the maximum fund management charge for the investment.

I note the letter from September 2005, Prudential sent to Mr M. This appears to relate to a query Mr M raised about the performance of the policy. This indicates that costs are weighted in the early years of the contract and this can impact performance.

I’ve also seen a letter sent to Mr M in September 2006, which appears to have been sent in response to a query about charges. This letter again explains that charges are higher in the early years to pay for initial commission and start-up costs. It also explains that there are other costs, and units are deducted to pay for them. The list included a plan charge, life cover and critical illness cover charges, and waiver of premium charge. There is a breakdown of these current monthly costs for those charges. The letter also covers the AMC – it says “There is also a fund management charge of 0.75% on the investment-linked units. We do not deduct this charge from the units as it is reflected in the daily funds prices”

As part of a complaint raised, Prudential sent Mr M a final response letter in October 2013. Again, this relates to concerns raised about charges on the policy. This included information on the “policy” charges application since the policy commencement. Enclosed was a breakdown year on year of the policy charges applied. This covered the plan charge, life cover, critical illness cover and waiver of premium charge.

I've seen plan updates on the performance of the policy. The earliest statements Prudential have sent that include details of charges is dated June 2020. This has a section titles 'How we take charges from your plan'. It goes on to explain the AMC for unit linked funds and that the charge is taken daily as a deduction from the fund. And it explains for With-Profits funds, a charge is deducted from the With-Profits Fund each year to cover funds costs – but it is not explicit so an investor won't see it being taken from their plan and instead it's deducted from the underlying With-Profits Fund as part of bonus calculations. Later in the statement there is a table setting out AMC for the managed fund (0.75%) and the With-profits funds (also detailed as 0.75%), which Mr M is invested in. But it doesn't give a monetary figure for the amount of the AMC for the year.

Prudential sent a further letter in May 2021 letter, in response to a query raised by Mr M. This again sets out the policy charges for Mr M in a similar format to that he has been given before. It also included details of the fund management charge as a percentage - and notes stating "We do not deduct this charge from the investment linked units as it is reflected in the daily fund prices. In addition to our charges, there may be further costs incurred, which can vary over time. Where these are applicable, they are paid for by the relevant fund and will impact on its overall performance. For more information on these Further Costs, please look at the current Fund Guide for this product."

The June 2021 statement contains much of the same information as the previous year's statement. But this now also provides the monetary figure for the AMC Mr M incurred through the fund for that year as well as the percentage. I note despite this information being available Mr M doesn't appear to have complained at this point about the AMC. The June 2022 statement, which receipt of led to Mr M complaining, contains much of the same information as the 2021 statement. So, it again confirms the percentage and monetary figure that has been charged as part of the AMC.

When Mr M complained in 2022, he raised concerns about inconsistent and incomplete information being provided to him in the past about the charges he incurred. He also said Prudential had failed to provide the comprehensive breakdown of charges that he requested in his previous queries. He was unhappy that it was only the last two statements when transparency had been given, and this would have been very welcome much earlier.

Having considered everything provided, I'm satisfied there is evidence that Mr M was given information at the outset about fund charges. And he was again given information by Prudential in 2006 about the AMC, and it was explained how it was calculated at this time. He then received further information through the statements I've seen that indicate there are fund charges. So, there are a number of pieces of evidence to support that Mr M was told about the fund charges at various points during the time he's held the policy – and certainly long before he received the 2022 statement.

From the 2021 statement, there was a change in how the AMC was displayed. It was now a monetary figure, so it was more transparent about what had been paid for this particular charge. However, I'm not aware of there being a requirement when Mr M was making his past enquires to set out the monetary value of AMC – so I don't think Prudential is at fault for not doing that in the earlier years. I agree with the investigator, these charges were always part of the policy and had been charged throughout. It follows that I don't find Prudential needs to refund any fees to Mr M.

However, having reviewed the final response letter sent in October 2013, there is no reference made to the fund charges. Prudential has conceded that as part of the query and complaint process it dealt with for Mr M in 2012-13, it failed to reiterate that there are additional fund charges. It accepted there have also been other instances where he has asked for the charges to be described, and its responses have been inconsistent and *incomplete. So, I agree the information provided wasn't as clear as it should have been.*

I've gone on to consider what I think is likely to have happened if Mr M was given more detailed information in 2013.

The AMC isn't the same as the other charges Mr M was informed about – these are all policy charges. The AMC is a fund charge and it is collected differently and the amount chargeable is dependent on the fund value.

The life cover, critical illness cover, waiver of premium and policy charge are charges that reduced the contribute to the growth of the policy. But the AMC is deducted from the fund, so the premiums are invested for growth but a deduction is made from the fund. This makes a difference because Mr M has explained that he wanted to establish the costs / deductions of his policy to be able to run his own model as to how the underlying policy was doing to enable him to plan and make decisions. So he says he needed to know how much is actually invested. So, where the AMC is deducted from the fund, the premiums are invested and the charge is collected differently. It wouldn't be possible to predict the performance of the fund accurately in advance, so while the percentage of the AMC was known, the monetary amount would always be dependent on the fund performance.

As stated, the AMC is calculated as a percentage of the fund value. So, the longer Mr M held the policy, the greater the chance the fund value would grow – and the higher the AMC payable. Information provided by Prudential indicates the policy was only worth around £36,000 in 2013, compared to over £150,000 in 2022. So had Mr M been given the AMC as a monetary figure in 2013, it would have been significantly less than the amount detailed on the 2022 statement. While the monetary figure he saw alarmed Mr M when he noticed it in 2022, the AMC would have been a fraction of the size in 2013. So, it is entirely possible he would have viewed things differently at this time.

As mentioned earlier, Mr M didn't complain after receiving the 2021 statement and this also sets out monetary cost of AMC. This does cast some doubt about whether clearer information would have led him to take action on his policy as soon as he became aware.

I'm also conscious that even if Mr M had surrendered his policy and invested in another product, it is very likely he would have had to pay similar AMCs wherever his investment was held, so this is something else I've considered.

On balance, I'm not persuaded that the failing to provide more detailed information 2013 leads me to conclude Mr M would have acted to surrender his policy or make significant changes to the policy if he had clearer information. While it is possible, he may have taken action, I don't think the evidence is sufficient to say he more likely than not would clearly have acted to mitigate. I'm required to make this finding without the benefit of hindsight. I say this bearing in mind my finding above, that Prudential had given Mr M information about the existence of an AMC both prior and after 2013.

I've also considered the practical and emotional impact of Prudential's failings to give incomplete information in 2013. It is apparent that Mr M was extremely frustrated to find out more recently that there was a fund charge linked to his policy that made up a significant amount of the overall charges incurred. He understood from his previous concerns that he had all of the information. So I've considered whether the offer made by Prudential is fair and reasonable compensation in the circumstances. Having done so, I agree the level of compensation awarded is fair. I understand this has already been paid to Mr M, so I don't recommend any further action."

Mr M responded to my provisional decision. In summary he said:

- Within the provisional decision the ombudsman said he didn't complain after receiving the 2021 statement. He clarified that he did in fact complain (immediately) after receiving this statement. And he said this adds credibility and strength as to his mitigating actions and convictions.

- He has acted in good faith to navigate years and years of differing, inconsistent and incomplete information provided by Prudential. The constant inconsistency eroded his faith in what he was being told and hence his ability to financially model. This led to him trying to draw a line in the sand in 2013 by asking a seemingly simple question to "Please provide the actual figures of ALL the fees / costs of the product in writing, so I can do my own scenario analysis and make decisions"

- A financial institution has a duty of care to be able to provide complete and accurate information to its clients. He informed the senior manager he dealt with as to the reason he was asking for the information and what he was going to do with it, i.e., that it would feed into the scenario model and analysis of future performance and make decisions thereon. So, Prudential had a full understanding that the implications of not providing full and accurate information. Prudential has agreed and conceded that the information it had provided to him in the past about charges had been inconsistent and incomplete.

- The action he took was to pay down chunks of his mortgage, so he did not have to rely on the endowment. He did not withdraw from the product but also did not add to it, instead he reduced the associated liability. His decision on mitigating the risk from this product was not to start another policy but to pay off the associated liability.

Prudential didn't provide any further submissions for me to consider.

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.

Firstly, I acknowledge and thank Mr M for the clarification he has given about him raising concerns after receiving his 2021 statement. This is helpful in understanding the background to his interactions with Prudential at this time. But this clarification on its own doesn't persuade me to alter my findings.

In my provisional findings, I said the lack of evidence of a complaint being made on receipt of the 2021 statement does cast some doubt about whether clearer information would have led him to take action. This point wasn't a definitive factor in reaching my findings, but rather something that I thought gave weight to them. But I appreciate from what Mr M now says this is not the case. So, I no longer make the inference that a lack of complaint in 2021 can be viewed in the way I suggested.

Mr M says there has been longevity of dealing with inconsistent information received from Prudential - and this has eroded his faith in what he was being told. This is what led him to request information in 2013, so he could complete his own analysis. I accept his point that he was acting in good faith and his desire was to obtain information to model the future performance to help him make decisions about his investment.

I'm conscious that Mr M's request was for all fees and costs of the product to be provided. What Prudential interpreted this to mean, and actually provided him with was the direct fees and charges taken from his premium for the policy – that being the life, critical illness, policy and waiver of premium charges. It also set out the investment content for the premiums (i.e. the percentage of the premiums allocated to purchase units year on year). This did allow Mr M to understand how much of his premium was being used to generate growth.

From what Mr M's said, it appears he wanted to know how much of his premiums were being deducted for fees and charges to allow him to understand the percentage of the premium that was going towards investment growth. In his submissions to this service he said he *"…wanted to establish the costs / deductions of the policy to be able to run my own model as to how the underlying policy was doing to enable me to plan and make decisions. For this I needed to know how much is actually invested which means knowing what the costs, charges and deductions applied to the policy are month on month."* And in respect of mitigation, he said he could have *"taken some action to either mitigate them or look at moving my product in the early years to something where the charges were more modest so the investment base and monthly contributions would not have been eroded.*"

What Prudential didn't explicitly set out in 2013 (but did set out in detail in the more recent statements that prompted the complaint) was the charges that are incurred within the fund – specifically the AMC. There is a distinct difference between the policy charges and the fund charges. Mr M's submissions indicate he understood the AMCs have eroded his monthly premium contributions. But I don't find this to be the case. As explained in my provisional decision, the fund charges are taken as a percentage of the overall fund value, so this charge increases as the value of the policy does overtime. So it isn't a charge that has a direct impact of decreasing the investment content of the premium Mr M's paid. This supports my earlier conclusion that, on balance, clearer information about the AMC in 2013, wouldn't have led Mr M to act differently.

Mr M says he took mitigation to counter the risk of the policy (i.e. the risk of a shortfall in the value of the policy needed to repay his mortgage). He says he paid lump sums off his mortgage and didn't start a new policy. This mitigation action to ensure the repayment of his mortgage was an entirely sensible action in the circumstances. The point I was making here was a more general one, in that if Mr M wanted to continue to invest, he would likely have faced fund charges wherever he held an investment. But this would be a moot point if he had no intention of investing anywhere else.

Having considered the further submissions Mr M has made, I still find the key points from my provisional findings stand. They are:

- I'm satisfied there is evidence that Mr M was given information both at the outset and during the time the policy has been held about the existence of fund charges. And Prudential doesn't need to refund the AMCs taken.

- While the information provided by Prudential has at times been somewhat inconsistent, I don't find that clearer information would have led Mr M to act to surrender his policy or make significant changes to the policy.

- The compensation offer made by Prudential is fair and reasonable in the circumstances.

It follows I've not been persuaded to change the findings I set out in my provisional decision.

For the reasons given above and those in my provisional findings, I haven't found Prudential need to do anything further.

My final decision

The Prudential Assurance Company Limited has already paid Mr M fair compensation in relation to the failings identified, so I don't uphold the complaint or require it to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 18 April 2024.

Daniel Little
Ombudsman