

The complaint

Mr W complains about the original advice he was given by Zurich Assurance Ltd (Zurich) to take out a personal pension plan (PPP). In particular he complains that the charges that have been applied are excessive and have adversely impacted the fund value.

What happened

Acting upon advice, Mr W contracted out of the state earnings related pension scheme (SERPS) and started an appropriate PPP with Allied Dunbar (now part of Zurich) in August 1991.

In July 1994 Zurich arranged for Mr W's then employer to make monthly contributions to the same plan – as it would seem Zurich administered the employer's group personal pension plan. Mr W subsequently left that employer and in June 2003 he asked to make personal net monthly contributions of £48 to the plan.

By August 2022, an annual statement showed the total plan value was £93,081.54. The same statement estimated his total fund value at his normal retirement dates could be £129,100. The total charges that had been applied that year were £686.98.

In February 2023, when Mr W received financial advice arranged by his new employer, he learnt the extent of the charges that were applied to his PPP and decided to transfer it to a new provider. But he complained to Zurich about what he felt were excessive charges on his pension which he didn't think had been fully explained when he took it out. He also thought the charges hadn't been adjusted in line with a "ruling" from the regulator in 2000 that pension charges should be less excessive. He also complained that his current adviser should have recommended an alternative pension plan to him during a previous pension review – but that complaint was passed to a different appointed representative who was responsible for that adviser.

Zurich said Mr W would have been given documentation which set out the details of his plan – including all the charges that would be applied – when he took it out. So it thought he was in a fully informed position to make his decision to start the plan at that time. It said the charges were applied in line with its terms and conditions.

It further explained that the changes he'd referred to in 2000 applied to the new stakeholder pensions but didn't affect existing PPPs.

But it said that from April 2015 regulation was introduced which capped the amount Zurich could charge Mr W if he transferred his plan benefits before his normal retirement date to 1% of the fund value.

Zurich also confirmed that it thought the earlier advice to contract out of SERPS was suitable.

Mr W, who by now had transferred his plan elsewhere, wasn't happy with the outcome so he brought his complaint to us where one of our investigators looked into the matter. They didn't think the complaint should be upheld, making the following points in support of their assessment:

- Having considered Mr W's circumstances from 1991 they thought it was reasonable for Zurich to recommend that he contracted out of SERPS.
- They set out a breakdown of the charges that had been applied to the pension in 2022 and felt these were in line with what had been explained and presented to Mr W when he took out the plan. So they thought Zurich had applied its charges in the way it said it would.
- They didn't believe Mr W had been overcharged so wouldn't be asking Zurich to refund any fees.

Mr W didn't agree. He made the following points in response:

- He thought we had agreed that the charges applied to his pension were high, but we seemed to say this was acceptable if a consumer was young and could invest for the long term.
- Being so young when he took out the pension, he relied on Zurich to look after his money and manage it properly.
- He didn't think the original policy provisions were at all clear in explaining the charges and didn't set them out in monetary terms. He said it was only when he received the new format of annual statements that he was able to begin to understand the charges that were being levied.
- He thought that a provider shouldn't be able to make more money from charges than he could afford to invest into his plan.
- He didn't think any adviser would agree that his pension was "*a sound investment*" but he'd been told repeatedly by financial advisers that it was the best plan for him.

The investigator said:

- The advice to pay into the pension in 1994 was arranged by Mr W's employer and Zurich could only recommend a limited range of investments.
- The costs and charges that applied to the pension were outlined at the outset – albeit not in monetary terms. But the investigator thought they were set out in a fair and not misleading way.
- Mr W said he hadn't been aware of what he was being charged until recently, but the investigator thought he ought to have known that administration of a pension would incur some costs.
- Since February 2021, the regulator had required businesses to set out the actual monetary value of its charges in annual statements – which it would seem Zurich did.
- Further information on the charges would have been available on request from both Zurich and the financial advisers involved.

Mr W asked for his complaint to be referred to an ombudsman, so it was passed to me to review.

I issued a provisional decision partially upholding the complaint on 21 August 2024. Here's what I said, which forms part of my final decision as set out below.

"Mr W has principally complained about the charges that were applied to his PPP and how these impacted the value of his funds over the years. But in its final response letter Zurich said it had considered "both your complaint and the general suitability of your PPP." I think that was a reasonable position for Zurich to take as charges were only one aspect of what it

had to consider when it gave Mr W advice in 1991 and 1994. So, using our inquisitorial remit, I too have considered the overall suitability of that advice when making my decision.

The original advice from 1991

In 1991 Zurich advised Mr W to contract out of SERPS and direct his national insurance payments contributions to a PPP with it instead. SERPS was a top-up to the basic state pension which meant that in addition to their basic state pension consumers would also receive a SERPS pension at retirement. But the government brought in regulation so that consumers could choose to opt out of SERPS, also known as contracting-out.

This was a fluid situation so that people could contract in or out of SERPS from tax-year to tax-year and there was usually a (pivotal) age at which it was beneficial to contract back into SERPS. The process required the consumer and employer to pay the normal level of NI contributions and, once a year, the state paid (known as rebating) part of these contributions into a PPP.

When the government decided to allow individuals to contract-out of SERPS, incentives were offered to encourage them to do so. No guidance was given on who should be advised to remain in SERPS or on the type of person it was expected that contracting-out would be beneficial for. So pension provider's actuaries carried out comparisons of the projected benefits from SERPS with those from alternative personal pension arrangements, based on "conservative" assumptions of future investment returns.

As there was little government guidance around "contracting out" providers generally took four main factors into account when considering whether to advise someone to contract out or not. These were:

- The "pivotal" age, which was an age when the provider thought it reasonable to assume a consumer would benefit from contracting out – usually thought to be "the younger the better."
- The current salary and whether it met any minimum earning requirement the provider had set.
- A consumer's attitude to risk (ATR).
- Whether there was an Occupational Pension Scheme (OPS) available to join.

So, I've looked at the information that was known at the time to assess if the advice was suitable and if Mr W was eligible to contract out of SERPS.

The application form that Mr W completed included a declaration which said that "I am not a member of an occupational scheme..." I think Zurich was entitled to rely on that as confirmation there was no OPS available, and I note that three years later Mr W did join the employer's group pension scheme administered by Zurich – so I think it's reasonable to conclude that option wasn't available to him 1991.

As set out above, the age at which a provider's advice of whether to contract-out might change was called a "pivotal age." At the time of this advice, when the provider was called Allied Dunbar– before it was taken over by Zurich, its own rules noted that it had a maximum age of 51 for males to contract out of SERPS. Mr W was nearly 17 at the time and so was significantly below the pivotal age. And based on the conservative assumptions used, it was thought in broad terms that men beneath the pivotal age would be better off contracting out of SERPS. In Mr W's case there was around 34 years before it was likely that suitable

advice would be for him to contract back into SERPS – which would suggest, given the investment horizon available, that it was in his best interest to contract out.

Another factor used to determine whether someone was likely to be better off contracting out of SERPS was their earnings. Zurich had no minimum salary requirement at the time, although Mr W's annual earnings – which were noted as being £2,714, were above the lower earnings limit which was considered to be enough to ensure that rebates forwarded by the government would generally cover the charges of the PPP. But in any case, the earnings level was usually only an issue where the consumer's pivotal age might mean the advice to contract out was 'borderline.' In this case because of the length of time that Mr W's money would be invested, there was a greater chance that he would be better off by contracting out.

But I've thought carefully about the advice with regard to Mr W's ATR and the fund selection that was made by Zurich. There was no requirement to complete a fact find or record any discussions about Mr W's ATR so there's no contemporaneous evidence for me to consider here. But Zurich still need to establish Mr W's ATR and what type of fund would be suitable for him in 1991 and it's unlikely this would have changed between 1991 and 1994. So I'm not persuaded the investments that were selected were appropriate for his needs and I say that for two reasons.

Mr W wasn't even 17 at the time of the application and had no investment experience whatsoever. In his submission he's told us that he was an apprentice mechanic and had no idea how money or investments worked. That doesn't sound an unreasonable position to me, so I think he relied purely on Zurich, as the professional adviser, to provide him with suitable advice and investment choices. There was a long term investment horizon until he should have been advised to contract back into SERPS – so I think a default medium risk investment strategy wouldn't have been unreasonable – along the lines of a managed fund.

But the investment strategy that was recommended was 100% equities, 60% of which was in US, far east and European equities. I think that was unsuitable for Mr W based on his likely ATR and limited investment experience and knowledge at that time. But in addition to that I note that when Mr W joined his employer's pension scheme Zurich completed a "financial health check" which noted he was a "cautious" investor. Mr W was still only 19 at that time – and it was three years after his application for an appropriate PPP with Zurich. I find it more likely than not that he would have had the same ATR three years earlier.

I'll set out how I think this ATR ought to have influenced the advice in 1994 below, but I think it supports the idea that the higher risk investment strategy recommended three years earlier wasn't suitable or in Mr W's best interest. I'll set out at the end what I think Zurich needs to do to put this right.

The advice from 1994

My understanding is that in 1994 Mr W had the chance to join his employer's pension scheme, which seemed to be a group personal pension scheme also administered by Zurich. So I think it was reasonable for it to recommend that Mr W joined as the employer would be making the contributions and presumably Mr W would have benefited from that arrangement.

So I think, looking at his overall circumstances, that was in Mr W's best interest at that time. As I stated above the "financial health check" that Zurich completed recorded his ATR as cautious. I've thought carefully about this, but because of the longer investment horizon until his retirement age and his age at the time, I don't think it was unreasonable for Zurich to recommend the default managed fund in this case.

Indeed, from the choice of funds that I've seen noted on the application fund – which did

include fixed interest and gilt funds – I don't think it was an unsuitable strategy in the circumstances.

The charges for the pension were also set out in the policy provisions. These were:

“Bid/offer spread

- Payments to your plan are used to purchase units in your chosen fund(s).*
- Units are bought at the offer price, but valued and sold at the bid price*
- The bid price of each fund is 5% lower than the offer price of the same fund.*
- This difference represents a 5% charge on each payment into your plan.*

Allocation rate for regular payments

- Payments to your plan are used to purchase units in your chosen fund(s).*
- We may adjust the amount of each payment before allocating it to units*
- Up to ten years before the selected retirement age the allocation rate is 100%*
- In the last ten years before the selected retirement age we increase this to*
- 105% of the investment payment. The additional 5% is added at no additional charge.*
- 100% of the payment is used to buy accumulation units if payments continue*
- past the selected retirement age*

Annual charge of 0.75% of the fund value.”

Mr W is right to say that this would have been difficult for him to understand at the time, and he would have appreciated having the charges set out in monetary terms so that he could easily work out how much would have been deducted from his fund, but there was no regulatory obligation for Zurich to do that until 2021 so I don't think Zurich did anything wrong there. But in any case, the charges information was either provided or made available to Mr W so he would have had the opportunity to raise questions if he wasn't clear on how the charges worked.

But Mr W has complained about what he regards as “excessive charges” and that much of his regular contributions was used specifically for charges. So I've gone on to look at the level of charges that were applied to the plan, to see if they could be regarded as excessive in general terms and also to try to give Mr W a better understanding of their overall effect. It wasn't until 2021 that Zurich was obliged to set out the actual monetary charges that are deducted from pension plans, so I've taken the 2021 statement as the best guide to explain this. There's no evidence to suggest that charges weren't taken from the fund in the same way prior to this.

I think it's important to note firstly that charges aren't simply deducted from the regular investments. For example in the August 2021 statement it showed that total charges of £687.32 were taken which comprised £403.25 in fund charges and £247.15 in regular product charges.

There was a policy charge of £7.48 per month which was applied by reducing units within the plan, but all the other charges were taken from the fund overall and were set at various percentages of the fund.

The fund charges would have varied from fund to fund and the capital unit charge of 4.74% was only taken from capital unit funds if they still existed.

So the charges were taken as a percentage of the total fund of around £92,090 and amounted to less than 0.75% of the overall fund value. The charges weren't taken directly from the monthly contributions and these contributions would have been fully invested (except for any fees which might have been automatically deducted from regular contributions). Investment growth would have then been added to the fund and the exercise of taking around 0.75% of the fund would have continued the following year. So this doesn't support the claim from Mr W that only around £50 of his gross monthly contributions was invested in 2022.

Of course the charging structure in the early years would have been greater as set out in the policy provisions but I'm satisfied this was in line with what Zurich said it would do. But overall, as I've tried to explain above, I don't think a charge of 0.75% of the fund could be seen as excessive and from my experience it's not dissimilar to what other providers might charge for similar long term investments. But more importantly I think Zurich did set out the charges it would apply at the outset and from the evidence I've seen – particularly in recent years when it was obliged to present them in real monetary terms, it applied them in line with how it said it would – so I don't think the evidence would support the idea that the charges were "excessive."

I then went on to set out how Zurich should put things right, by comparing the value of that part of Mr W's PPP that had been used to contract out of SERPS against the value had it been invested into Zurich's managed fund. I said that comparison should run until either the original fund had been transferred to the managed fund or been transferred to another provider – and then brought up to date.

Responses to the provisional decision

Aviva said it agreed with much of the provisional decision but didn't accept that Mr W relied on the adviser regarding investment choices in 1991. It said its advisers at that time could only recommend the managed fund, but Mr W would have been free to choose alternative funds – which was what seemed to happen here. It said there was no evidence to suggest the adviser made any recommendation about the investment choice and wanted me to reconsider my decision on this aspect of the complaint.

Mr W acknowledged the explanation of how annual charges are applied to the entire fund value, but he still didn't accept that the charges weren't excessive. He said that they still amounted to around half of the investment growth from the previous year. He thought Zurich ought to make its annual statement clearer in respect of explaining the charges – especially as it was now obliged to report them in monetary terms as well.

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 considered the further submissions from both parties I see no reason to depart from my provisional findings. I'll set out the reasons for my final decision below.

As I explained in my provisional decision I've looked at the suitability of the advice Mr W was given in 1991 and 1994 as I thought this underpinned his principal complaint point around the "excessive" charges he thought had been applied to his PPP throughout their term.

The 1991 advice

In 1991 Mr W contracted out of SERPS through a PPP with Zurich. I looked carefully at this

advice by comparing Mr W's circumstances at the time against the factors which providers generally took into account to decide if such advice was "suitable." I note that Mr W was below the pivotal age that was generally to be considered the maximum age at which contracting out should be recommended. I also note that his salary was above the lower earnings limit – although Zurich didn't have a minimum salary requirement at that time – which meant that the rebates Mr W would receive from the government would likely outweigh any personal pension charges. There was also no evidence to suggest that Mr W was eligible to join an OPS at that point.

This would suggest that it was reasonable to assume Mr W would be better off by contracting out and that the overall advice to do so wasn't unsuitable. But I've considered the position regarding the investment choices that were made and whether these were in line with Mr W's ATR and general investment experience at the time. In my provisional decision I said that the investment strategy was 100% equities – of which 60% was in what might be considered high risk non-UK equity funds. I thought that as Mr W was only 16 at the time and had no previous investment experience, or knowledge of investments generally, this was unsuitable based on his situation.

But Zurich has now said that it's adviser wasn't able to make any other recommendation except into the managed fund – so wouldn't have been able to make the recommendation that was implemented. It says that only Mr W would have been permitted to have chosen an alternative investment strategy so the evidence would suggest that it was him that chose the different funds. There isn't any evidence from that time which supports any advice that might have been given, so I'm unable to look at any discussion that may have taken place in 1991 around investment choices and ATR. And I'm mindful of what Zurich has said about adviser restrictions around investment recommendations at that time.

But I'm not persuaded that Mr W had either the financial experience or knowledge to make such independent investment choices himself. I simply don't think it's likely he would have understood the difference between the investment funds – or the risks attached to each one – so although there's no evidence to demonstrate what may have been discussed or "recommended" I think it's more likely than not that Mr W would only have agreed the choices that were made with some kind of third party discussion.

I also note that, although Zurich says the adviser could only have recommended the managed fund, there's no evidence to show how this might have been "policed" when the application was submitted. If an applicant chose to make their own investment strategy I would expect to see something on the application form – or a supplementary sheet – to confirm that an individual had acted against the default advisory position. I accept this finding has to be based on the balance of probability as there's little to confirm the process that might have been involved in determining individual investment choices. But it seems unlikely to me that Mr W, considering his circumstances at the time, could have made the specific investment choices that were made, entirely on his own.

But I think of more likelihood is that the agreed ATR from the 1994 advice would have been the same, if tested, in 1991. So I think the resultant investment choices ought to have been the same on both occasions.

The 1994 advice

Zurich's advice from 1994 was simply for Mr W to join his employer's pension scheme which I understand was administered by Zurich. There were good reasons to assume this to be in Mr W's best interest and I note there's no dispute that this was appropriate for him at that time. I think Mr W would have understood the benefit to him of joining the scheme. And in 1994 a "financial health check" was completed to consider Mr W's circumstances and clearly

define his ATR.

On this occasion the ATR was defined as 'cautious' and, as I've said previously, I think it more likely than not this was his ATR in 1991. But the default managed fund was recommended in 1994 which, given the choice of funds available, wasn't in my view inappropriate. The PPP could have continued until Mr W's normal retirement age – so there would have been a long investment horizon to justify using the managed fund taking into account Mr W's ATR. So I think the advice to join the employer's pension scheme – and the investment choices that were made in 1994 was suitable.

But having considered the suitability of the advice Zurich gave Mr W in 1991 and 1994 I've gone on to consider Mr W's complaint about the level of charges that were applied to his plan. To do that I've looked at the charges that were set out in the original policy provisions.

Were the charges excessive?

Zurich's pension policy provisions, made available to Mr W when he took out his plan, set out the charges applicable. There was bid/offer spread on all contributions which equated to 5% on all payments that were made into the plan. Alongside that regular payments were given an "allocation rate" meaning that 100% of the premiums were invested until 10 years before retirement when 105% was invested. The annual charge was 0.75% of the fund value.

I accept that Mr W says these charges weren't easy to understand and it would have benefited him if they were set out in pure monetary terms. The charges were set out as Zurich was obliged to at that time and reflected the regulatory requirements from 1991. I note that position was changed in 2021 so that providers were required to set out charges in the annual statements in monetary terms which made it easier to work out the actual charges that were deducted from a fund.

So I can't reasonably say that Zurich didn't do what it was obliged to with regards to explaining charges at all points during the time Mr W held his plan. Mr W would have had the opportunity to question this information and seek more clarity along the way if it wasn't clear to him.

Mr W hasn't said he wasn't told about the charges and indeed he told us that he accepts charges are levied on pension plans and he has no problem with paying them. But his complaint is that they were excessive and that the "*bulk has been going in Zurich's pocket.*" So I've looked carefully at his claim that the fees were unreasonable.

In my provisional decision I tried to explain how the charges were levied on the overall fund that Mr W held and worked out at around 0.75% of the overall fund each year – in addition to a regular policy fee of £7.48 each month. Mr W told me he was appreciative of this explanation which has helped him understand how Zurich arrived at the level of charges it applied. But he still feels they are excessive and thinks the August 2021 annual statement showing overall charges of £687.32 supports that claim.

There's no regulatory guidance on what should be regarded as "excessive charges." Simply a requirement for firms to be transparent and explain their charges within their product literature. So I don't have any benchmark to use here.

I think Zurich has set out its charges in the way it's been obliged to over the years although I note the more recent transfer to using monetary amounts since 2021. But in my experience

these charges are broadly in line with what I've seen from other providers around PPPs, and I don't have any evidence to suggest they're excessive within the industry. I imagine Mr W would say he regards them as excessive regardless, as indicated by his recent transfer to another provider, but I haven't been presented with any evidence to support that claim.

Summary

I've concluded that the general advice Zurich gave Mr W to contract out of SERPS in 1991 and to join his employers group pension scheme in 1994 was suitable. I've also looked carefully at the charges that Zurich applied and I think it made Mr W aware of them and applied them in line with how it said it would. I've found nothing to support the idea that the charges were excessive when compared to the industry in general or that they could be regarded as excessive when looked at in isolation.

But I don't think the investment choice that was agreed in 1991 was suitable for Mr W as I think it was too high a risk for his then ATR. I'll set out below what I think Zurich needs to do to put that right.

Putting things right

Fair compensation

My aim is that Mr W should be put as closely as possible into the position he would probably now be in if he had been given suitable investment advice in 1991.

I think Mr W should have been advised to invest in Zurich's managed fund – in line with what happened when he joined the employers' pension scheme in 1994. So I'm satisfied that what I've set out below is fair and reasonable given Mr W's circumstances and objectives when he invested.

What must Zurich do?

To compensate Mr W fairly, Zurich must:

- Compare the performance of Mr W's investment with that of the benchmark shown below. If the actual value is greater than the fair value, no compensation is payable.
- If the fair value is greater than the actual value there is a loss and compensation is payable.
- Zurich should also add any interest set out below to the compensation payable.
- Zurich should pay into Mr W's pension plan to increase its value by the total amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.
- If Zurich is unable to pay the total amount into Mr W's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the total amount should be reduced to *notionally* allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr W won't be able to reclaim any of the reduction after compensation is paid.

- The *notional* allowance should be calculated using Mr W's actual or expected marginal rate of tax at his selected retirement age.
- For example, if Mr W is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. However, if Mr W would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation.

Income tax may be payable on any interest paid. If Zurich deducts income tax from the interest it should tell Mr W how much has been taken off. Zurich should give Mr W a tax deduction certificate in respect of interest if Mr W asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
The part of Mr W's PPP used to contract out of SERPS.	No longer in force	Zurich's managed fund	Date of investment in 1991	The date that Mr W transferred to the new provider.	8% simple per year on any loss from the end date to the date of settlement

Any loss that's been identified at the date of transfer should be brought up to the date of this final decision using the (percentage) investment growth on Zurich's managed fund during that time.

Actual value

This means the actual amount paid from the investment at the end date.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

Any additional sum paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in.

Any withdrawal from the Pension should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if Zurich totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

Why is this remedy suitable?

I've decided on this method of compensation because I think the managed fund that Zurich used when Mr W took out the pension in 1994 was appropriate for him, so this should have been used in 1991.

My final decision

For the reasons that I've given I uphold, in part, Mr W's complaint. My decision is that Zurich Assurance Ltd should pay the amount calculated as set out above.

Zurich Assurance Ltd should provide details of its calculation to Mr W in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 9 October 2024.

Keith Lawrence
Ombudsman