DRN-5792130

The complaint

Mr S complains that he's being financially disadvantaged by the lack of fund choices offered by The Prudential Assurance Company Limited (Prudential) and the level of pricing/fee charges relating to those he's already invested in. He's seeking more freedom of choice, with an emphasis on being able to invest in a low fee index tracker fund.

Mr S is represented by his son in bringing this complaint.

What happened

Mr S has two pension policies with Prudential, which I'll refer to as policy 945HU*** and policy 146MB***.

On 15 October 2024 Prudential wrote to Mr S with information about transferring his pension. Prudential said the current combined transfer value of Mr S's two policies was £204,385.52 which wasn't guaranteed. The letter said Mr S's pension included valuable guarantees which would be lost on transfer. And that Prudential was legally required to check that Mr S had taken financial advice if he chose to transfer. Information for the receiving scheme was included, along with transfer forms.

On 15 December 2024 Mr S emailed Prudential raising a complaint. He said he wanted freedom to choose which funds to invest in before he went into drawdown and he was unhappy with the current fund. He asked for details of the funds available and the management fees.

I've seen that on 18 December 2024 information about Mr S's policies was sent to a FCA (Financial Conduct Authority) regulated advisory firm.

On 20 December 2024 Prudential wrote to Mr S enclosing an investment alteration form. Prudential said details of its investment linked funds were available on its website, a link to which was given. That was in connection with policy 945HU***. About policy 146MB***, Prudential said guaranteed annuity rates (GAR) applied from age 60 to 75 and fund switching wasn't applicable.

On 24 December 2024 Prudential sent a final response letter to Mr S. Prudential identified his concern as that he was unhappy with the performance of his plan. Prudential said investment returns were dependent on the performance of the chosen fund(s) over the period of investment, after charges or withdrawals. There was no guarantee of growth or that the value wouldn't decrease. And that the product literature Mr S would've received at the outset had made it clear that the value wasn't guaranteed.

Mr S replied on 26 December 2024 to say his complaint was that he didn't have freedom of choice as to the underlying fund which he was invested in prior to going into a drawdown arrangement. He also queried if any payments were being made to his adviser.

Prudential apologised and said it had arranged for the complaint to be reopened. In its final response letter of 9 January 2025 Prudential referred to its letter dated 20 December 2024. It explained that, for policy 945HU***, Mr S did have the option to swich funds. Details of Prudential's funds were available on its website. For policy 146MB***, fund switches weren't available due to the policy's terms and conditions. As noted in the letter, the policy contained a Guaranteed Annuity Rate (GAR), classed as a safeguarded benefit under current UK pensions legislation.

Prudential said, for policy 146MB***, there was a premium-based renewal commission of 1.50% of the premium amount. The monthly premium was £44.20 which resulted in a commission amount of £0.67 per month. The last payment was made on 1 April 2014. Prudential hadn't been able to locate any payments for the other policy, 945HU***.

The complaint was referred to us. Mr S said his father had no freedom of choice and would like a low fee index tracking fund. All of Prudential's funds were excessively expensive and so Prudential must be getting some kind of 'kick back'. Mr S's son expanded on that in his email of 11 January 2025. He said some of the funds had management fees of over 2% but had underperformed their index. In some cases, there were two different fund series and Prudential had chosen the more expensive. He cited the BlackRock Gold and General Fund. Prudential had chosen Series A paying 1.8% but Series D charged 1%. In response to some questions raised by the investigator, Mr S's son also said Prudential was charging 'layered fees' which hadn't been disclosed and so should be refunded.

The investigator also requested some further information from Prudential. In reply Prudential referred, amongst other things, to a review of its charging structure, resulting in the repricing of all its plans in line with the stakeholder guidelines. A unit transaction summary for policy 945HU*** was supplied, from inception up to January 2019.

Our investigator didn't uphold the complaint. About fund choice he said fund switches for policy 945HU*** could be made. Prudential's letter of 24 December 2024 set out how to locate, on its website, details of available funds. That letter also said that fund switches couldn't be made for the other policy, 146MB***. The investigator said the fund choice for policy 945HU*** was a matter for Prudential and a legitimate exercise of their commercial judgment. If a consumer was unhappy with the selection of funds on offer, they were free to transfer out to another pension provider who had what they considered to be a more attractive fund range. Transferring out had been discussed over the telephone on 7 October 2024 and Prudential had sent transfer out information on 15 October 2024. About charges, the investigator set out what Prudential had told us, including what Prudential had said in its final response letter about commission payments.

In response, Mr S's son said, if his father was dissatisfied with the selection of funds on offer, he wasn't free to transfer to an alternative pension provider – because he'd lose the GAR. Which had been financed by the excessive fees on the products he'd been forced to invest in and which hadn't properly been explained. He'd had the choice of investing as he wanted and taking out an annuity or investing in the policy with a GAR. He felt the latter was poor value and was never going to be more attractive than the former but that hadn't been explained to him. With reference to what had been said about Prudential having reviewed its charging structure, he said it hadn't been made clear when the charges had been taken off and backdated and so he wanted confirmation about that. In a further email he said a fair outcome would be for Prudential to refund the 'layered' fees that had been charged and not disclosed to his father.

The investigator asked Prudential when the new charging structure was put in place and if Prudential would agree to make the refund Mr S had requested.

Prudential said policy 146MB*** is a conventional with-profits plan with no explicit charges. Policy 945HU*** is a unitised with-profits plan. Prudential set out what charges had been taken from the plan: An Installation Charge (a one-off charge taken when the plan was set up); Annual Member Charges - a yearly policy charge, which ceased in 2018; Fund Management Charges – applied to Type A units for the first 25 years of the plan but discontinued in 2019. Prudential also apologised that, contrary to what it had previously said, the policy wasn't included in the repricing exercise which took effect from 6 April 2001.

The investigator shared what Prudential had said. Mr S's son said his reference to layered fees meant fees added to the underlying fund charges by Prudential for their benefit and not disclosed to his father. He said Prudential had invested his father's money into funds to which Prudential then added more fees (over and above what the fund manager charged). Mr S's son referred again to the BlackRock Gold and General Fund. Although his father didn't have that specific fund holding it was an example of what Prudential was doing.

The investigator shared Mr S's son's further comments with Prudentia who said both policies were invested in with-profits and so an allowance had been made for the AMC when setting bonuses. Layered fees didn't apply. Prudential referred to its customer friendly versions of the PPFM (Principle and Practices of Fund Management) which explained how charges are allowed for in with-profits funds.

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.

Mr S's key concerns are a lack of fund choice, high costs attaching to some funds and/or layered charges and losing the GAR if he transfers away from Prudential so he can invest differently. I've approached the complaint from that basis. It isn't my role to answer (or get Prudential to answer) all the points if they aren't material to the outcome.

Policy 146MB*** began on 1 May 1980 and is a section 226 policy, otherwise known as a Retirement Annuity Contract (RAC). RACs could be taken out before 1 July 1988 by anyone who was self employed or not a member of an occupational pension scheme. They were replaced from 1 July 1988 by personal pensions, although existing RACs, such as Mr S's, could continue. RACs offered a limited, if any, choice of investment fund. Mr S's RAC is invested in with-profits.

This policy includes a GAR. That's the right to convert the fund into a lifetime income (annuity) at a specific age. The policy includes a table of GARs available when Mr S reaches age 60 up to age 75. The GAR is only available if Mr S buys an annuity with Prudential. GARs are generally higher than annuity rates available on the open market so a GAR can be a valuable benefit. That's reflected in the legislation (see section 48 of the Pension Schemes Act 2015 and regulations made thereunder). A GAR is a safeguarded benefit. Consumers with safeguarded benefits worth more than £30,000 must take financial advice before converting, transferring or taking them as a lump sum. That's Mr S's position. Looking at Table A in the policy terms and conditions which set out the annuity amount purchased by £1,000, the rates seem considerably higher than current market rates.

A with-profits fund can be conventional or unitised. Policy 146MB*** is a conventional with-profits plan. As Mr S has been told, a fund swich isn't permitted for this policy. And if he transfers out, he'll lose the GAR.

Policy 945HU*** was taken out on 1 April 1992 and is a personal pension. It's a unitised with-profits plan and is wholly invested in Prudential's With-Profits Pension Fund 3A (ex SA) Fund. There's no guaranteed fund value or GAR. And the position regarding fund switches is different too: Mr S can switch out of that fund or transfer the policy subject to any MVR

(Market Value Reduction) that might apply. In the email dated 13 June 2025 Prudential said the MVR was £334.03. Prudential has also said that on 28 October 2025 the MVR was £0.00 although that isn't guaranteed and can change daily. No MVR applies on death or retirement at the selected retirement date.

With-profits funds were popular investments in the 1980s and 1990s. Bonuses were applied regularly and policyholders were generally happy with their investments. But, from the early 2000s, investment conditions changed and bonus rates declined. At the same time, life expectancy increased faster than had been anticipated when guarantees had been set. When bonus rates fell, with-profits funds came under scrutiny. How a with-profits fund operates isn't straightforward and there's been criticism about a lack of transparency. The industry regulator, the FCA, recognises the issues. Providers are accountable to the FCA for the way in which their with-profits funds are operated. The FCA monitors this. Firms are required to appoint a with-profits actuary and the FCA provides rules and guidance on their duties. Since 2004 all with-profits providers must publish a PPFM document. A shorter, more consumer friendly, version is also available.

Prudential has said what charges were applied for policy 945HU*** and these are shown on the unit statement provided. The current charges are different as the annual member charge ceased in 2018 and, since 2019, the AMC is no longer collected by selling Type A units. Information about charges is shown on the annual statements issued by Prudential. For example, the statement dated 12 April 2024 says the approximated charges for policy 945HU*** were, in total, £436.01, made up of the AMC of £232.93, further costs of £123.44 and transaction costs of £79.64. For policy 146MB***, the approximated AMC is £72.62. Further costs not included in the AMC are calculated at £504.94, which is also an approximated value. So, in total, £577.56. Based on the total values of each policy shown (£40,474.69 for 945HU*** and £162,771.35 for 146MB***), the charges are around 1% and 0.03% respectively.

Implicit charging is generally a feature of with-profits funds. That means that charges have already been taken into account or deducted from the fund's assets when working out the value of the plan and a policyholder's share. So there won't be an explicit charge or deduction shown on a policyholder's statement. Although, as I've noted, Prudential has disclosed the approximated charges anyway.

Mr S's son has expressed concern about layered fees – that is paying multiple management fees for the same assets. For example, an investment manager might offer a portfolio of funds so the investor will pay the manager's fees but also those associated with each individual investment. That sort of 'doubling up' on fees can impact significantly on investment returns. But I can't see that's the situation here. With-profits funds will invest in a wide range of investments or assets. But Prudential charges a single AMC for each policy. So I don't think layered fees apply here.

Mr S's son has also referred to what he considers to be evidence of inflated charges by Prudential for some funds. But as I've said, the policies are invested in with-profits and so the charges applicable to other funds offered by Prudential aren't directly relevant and won't have caused Mr S's father any loss. But, that said, I can see that, in deciding whether to switch funds, the applicable charges for the new fund are relevant. If Mr S considers he can invest in the same or an equivalent fund to one offered by Prudential but pay, through another provider, lower charges, then that will impact on his decision as to whether to switch to the fund offered by Prudential. I think it's in that context that the BlackRock Gold and General Fund has been mentioned.

That inability to switch funds is Mr S's second concern. But, for policy 945HU***, it's open to him to switch funds and details as to how to go about that have been provided. But it seems

Mr S isn't happy with the fund choice. He has two issues – first that Prudential doesn't offer the type of fund he's interested in – a low cost tracker fund – and, secondly, he considers Prudential's fund charges are too high.

Here I agree with the investigator that the funds Prudential offers is a business decision for Prudential and a legitimate exercise of their commercial judgment. As is the charges that apply. It isn't for us to say how much a business should charge for services or products. If the customer isn't happy with the available funds, then they'll have to move to a product and/or pension provider which offers a different or wider selection of funds and/or more competitive charges. So I'm not in a position to do what's been requested – require Prudential to review its current portfolio and refresh it with the cheapest fund versions and/or include specific funds.

If Mr S wants to switch to a fund which isn't offered by Prudential, he'll need to find a pension provider who offers that fund and whose terms, including charges, are acceptable to him. I do understand that transferring out is much more involved than simply switching funds with the same provider. So it would be much easier for Mr S if Prudential offered a fund he's happy with and at what he regards as an acceptable cost. But, if fund choice is paramount, transferring is the only way that his investment objectives can be achieved. If he does decide to transfer, depending on prevailing market conditions, a MVR may be applied.

The position with policy 146MB*** is different. Fund switches aren't permitted. Mr S can transfer away but he'll lose the GAR which he thinks is unfair. But the GAR was a benefit offered by the provider (now Prudential) when Mr S took the policy out. If he moves away from Prudential then his contract with Prudential will come to an end and Prudential will no longer be bound by it and so won't be required to honour its provisions, including the GAR.

Mr S's son also suggests things may not have been explained properly to his father when he took the policy out and, if they had been, he'd have decided against the policy as he considers it offers poor value for money. But I'm not considering a complaint that the policy was mis sold. And, it seems, from what Prudential has said, there was a premium-based renewal commission of 1.50% of the premium amount paid up to 1 April 2014. I'd assume those payments were made to the advisory firm in place when the policy was set up. It would've been the adviser's responsibility to ensure the policy was appropriate for Mr S.

Consumer Duty has been mentioned. It came into force on 31 July 2023 and applied to 'open' products and services – those currently available to buy or renew. From 31 July 2024 it also applies to closed products. But it doesn't apply retrospectively to complaints about events that happened before that date. Here Mr S's complaint centres on policies which were taken out in 1988 and 1990. He might say that his issues – charges and fund selection – are ongoing. But I don't see that Consumer Duty changes the outcome.

My final decision

I'm not upholding the complaint and I'm not making any award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 10 December 2025.
Lesley Stead
Ombudsman