

The complaint

The trustees of the B Trust have complained to Prudential International Assurance Plc ('Prudential') about the cash in value of a whole of life policy.

The trustees are represented in bringing their complaint but for ease of reading I will refer to 'Mr B' – one of the settlors and trustees – throughout my decision.

What happened

Mr and Mrs B – the settlors – bought a Flexible Life Plan in April 1999 with an initial monthly premium of £42.82 and sum assured of £350,000 on joint life last death basis. It was a regular premium, unit linked, non-qualifying whole of life policy.

The policy was sold to Mr and Mrs B by a third-party financial adviser, so Prudential isn't responsible for the sale, but Prudential later took over the administration of the policy from a predecessor business.

Mr B decided to sell the plan and on 22 July 2024 was quoted £188,409.04 but upon encashment on 1 October 2024 he received a lesser amount of £138,312.13. Mr B found it was charges that caused the difference but didn't think Prudential had been transparent about them and raised a complaint.

Prudential didn't uphold the complaint. It said;

- As well as an Establishment Charge period when the policy was taken out, the plan had an Annual Indexation option and each annual increase created a new Coverage and Establishment Charge period.
- Mr and Mrs B chose the Annual Indexation option to increase the sum assured on each policy anniversary by the higher of the UK Average Weekly Earnings Index ('AWE') or 7.5%. The lower encashment value was due to an initial charge payable each time the indexation was reviewed.
- It detailed the charges and Surrender Penalty.
- Renewal commission was being paid for pre-Retail Distribution Review ('RDR' – pre 31 December 2012) tranches.
- It referred to the policy Terms and Conditions' Establishment Charges and concluded the policy was being administered in line with the policy Terms and Conditions.

Unhappy with the outcome the trustees brought their complaint to the Financial Ombudsman Service. Our investigator who considered the complaint didn't think Prudential needed to do anything more. She said;

- While Prudential didn't sell the policy to Mr and Mrs B it did have a regulatory obligation to provide clear information to them and she was satisfied it did.
- Each year the indexation increased a new Coverage was created on the increased premium and sum assured amounts.

- The Terms and Conditions included information about the Establishment Charges that would be incurred when the policy was surrendered.
- Since legislation was updated in 2015 the annual statements sent to Mr and Mrs B made clear the value quoted may be subject to Establishment Charges upon encashment and included the current fund value and cash in value which were clearly different.

Mr B didn't agree. He said the charges weren't highlighted in annual/indexation communications, nor was their effect on surrender made clear. The annual statements didn't explain the reason for the difference in values and the charges were disproportionately high to the monies returned. Our investigator explained this service doesn't have the power to direct what charges a business should make and she was satisfied they were made clear from the beginning. The difference in values shown on the annual statements was evident and Mr and Mrs B should have sought financial advice to ensure the plan was still suitable for them.

As the complaint remains unresolved, it has been passed to me for a decision in my role as ombudsman.

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.

After doing so, I have reached the same conclusions as the investigator and broadly for the same reasons. I'll explain why.

As a background to the charges for the policy, the initial regular premium charged is calculated to support the cover throughout life and based on assumptions such as the growth of the fund and expectation of future charges. Those charges are deducted from the underlying fund units and Prudential has told us those charges include the Administration Fee, the Protection Cover Charge – which I understand is by far the largest charge deducted usually of around 80% to 90% – the Underwriting Debt/Acquisition Charge and the Establishment Charge of 1%.

Mr and Mrs B chose the Annual Indexation option which meant the premiums and cover increased annually to keep up with inflation. This impacted on the surrender value as each year, when the premium increased, the new higher portion of the premium was subject to a new set of the above charges (with the exception of the Administration Fee) and particularly relevant to this the complaint, Establishment Charges/Surrender Penalties. Establishment Charges are dependent upon the age of the policy holder but range between five and 24 years and Surrender Penalties apply for any coverage that is less than ten years old. The units bought with the increased Annual Indexation premium were newer with their own Establishment Charges and incurred higher penalties if surrendered before the relevant Establishment Charge period had finished.

Turning now to the complaint, its agreed Prudential wasn't responsible for the sale of the policy, when all the above should have been explained, but it has provided a copy of the Terms and Conditions applicable to the policy at the time sale. Regarding the charges those Terms say;

'4.1 Establishment Charges

Regular Premiums

The Establishment Charges in respect of Regular Premiums, specified in the Schedule and expressed as a percentage of the units allocated to the Policy in respect of Establishment Premiums, will be levied during the Establishment Periods indicated below.

...

At the outset, the Establishment Period shall be determined by, and measured from, the Premium Commencement Date and the Establishment Period in respect of increases in the Regular Premiums shall be determined by, and measured from, the appropriate Regular Premium Increase Date.'

...

5.4 Charges on Full Encashment and Partial Withdrawals

The Company shall levy the appropriate Encashment Charges in respect of any encashment or Partial Withdrawal (including regular Partial Withdrawal of the Policy). In respect of Regular Premium Units, an encashment charge shall be levied upon the present value, account for any future establishment charges, of any establishment units allocated to the Policy, and also upon any Bonus Eligible Units allocated to the Policy.

The level of any encashment charge levied upon Regular Premium Units is based upon the number of complete years elapsed since the Premium Commencement Date, or where appropriate, the Regular Premium Increase Date.

The level of the encashment charge levied upon Single Premium Units is based upon the number of complete years elapsed since the Premium Receipt Date of the appropriate Single Premium.

Details of the level of Encashment Charges in respect of units allocated and years during which they apply are given in the Table of Policy Changes – Flexible Life Plan, a current copy of which is included with this booklet.'

The Policy Schedule referred to in 4.1 says;

'Charges'

Establishment Charges – Regular Premiums : 1% p.a.'

So, I am satisfied that Mr and Mrs B were informed of the Establishment Charges for regular premiums which would include those added over the years because of Mr and Mrs B's decision to opt for Annual Indexation.

While Prudential wasn't responsible for the sale, once it started administering the policy it had a regulatory obligation to provide the trustees with information that was clear, fair and not misleading. Mr and Mrs B don't think Prudential explicitly disclosed that Establishment Charges applied each time the Annual Indexation was reviewed and accepted.

While it's not in dispute that Prudential did have to provide Mr and Mrs B with the information they needed but I don't think this extended to it having to repeat the Terms and Conditions of the plan on an annual basis. And I am persuaded Prudential did provide Mr and Mrs B with sufficient information for them to have reasonably understood Establishment Charges could impact on the surrender value of the policy. And if they had concerns about this, they had

sufficient opportunity to seek more information about it – they could cancel the Annual Indexation if they wished – or reassess whether the policy was still suitable for them.

I say this because I've reviewed the information Prudential did give Mr and Mrs B and it has provided copies of its annual statements. It has explained there are two types of statements – the annual premium and benefit statements and the annual unit statement. In line with its obligation that those statements have to be clear, fair and not misleading Prudential has told us they have always been in line with industry standards.

I've reviewed the annual statements sent to Mr and Mrs B. From 2005 to 2015 they included the statement;

'The value quoted above is for illustration purposes only, should you decide to encash all or part of your plan the value may be subject to encashment charges.'

There was a regulatory change in 2015 and from April 2016 onwards the annual statements included two figures – a 'Current Cash-in value' and also a 'Fund value' which stated;

'The cash-in value stated is not guaranteed'.

These two figures were clearly different. As examples, the April 2016 statement showed a 'Fund value' of £38,730.70 and the 'Current Cash-In Value' of £11,442.20 and the April 2024 statement showed a 'Fund value' of £178,092.82 and 'Current Cash-In Value' of £127,582.06.

I also note from the annual review letter I have seen it refers to the 'Assumptions' used in the review and the current value of the plan. It goes on to say;

'This is not a surrender value. If you choose to surrender your Plan the value may be subject to an encashment charge.'

I think the statements and annual review letter gave sufficient warning about the potential difference between the current value and fund values. And looking at the annual statements' 'Current Cash-in Value' and 'Fund value' I think the values were significantly different to the extent that even if Mr and Mrs B weren't previously aware of the difference between the two – or had forgotten the information they should have been given at the point of sale – I am of the opinion the difference between the two figures should reasonably have been noticed by Mr and Mrs B. And if this gave them cause for concern, or they didn't understand the reason for the difference between the two values, they could have sought more information about this.

Mr and Mrs B's argument is that Prudential should have provided more information in the statements and that if they had been fully aware they would have acted differently. While I've not seen anything to persuade me Prudential had an obligation to provide more information than it did, and bearing in mind all the information Mr and Mrs B say they were seeking should have already been given at the point of sale, I've thought about what Mr and Mrs B would have done differently if they had been aware of the Establishment Charges.

But I'm persuaded it is reasonable to conclude Mr and Mrs B should have identified the difference between the two values – and particularly since the changes to the statement in 2016 where they were further highlighted – and they had this information for nearly ten years before they decided to surrender the policy. So, overall, I don't think it's unreasonable for me to conclude that as Mr and Mrs B didn't raise their complaint any earlier, it didn't cause them any concern sooner than it did when they were reasonably in possession of that information.

I appreciate Mr and Mrs B are unhappy with the value they received for the policy following full surrender, but overall, I'm not persuaded that Prudential hasn't been clear, fair or misleading in the information it has provided. And I'm satisfied the charges are an inherent part and key feature of the policy as outlined in the original Terms and Conditions and the policy behaved in line with those original Terms and Conditions.

My final decision

For the reasons given, I don't uphold the trustees of the B Trust's complaint about Prudential International Assurance Plc

Under the rules of the Financial Ombudsman Service, I'm required to ask the trustees to accept or reject my decision before 11 March 2026.

Catherine Langley
Ombudsman