

## **complaint**

Mr and Mrs D's complaint concerns a Flexible Investment Plan they held with The Prudential Assurance Company Limited. They consider that when regulatory changes led to Prudential no longer making annual commission payments to the business that sold the plan it should've proportionally reduced the overall charges associated with the investment.

## **background**

Mr and Mrs D were sold the Prudential plan by a separate party, Business A, in 2010. In the information supplied to them at the time it explained what the various cost deductions would be. These included the commission Prudential would pay to Business A – an initial sum followed by an ongoing annual percentage, equating to just over £300.

Subsequent regulatory changes resulting from the Financial Conduct Authority's (FCA) Retail Distribution Review (RDR) meant that from the end of 2012 Business A was no longer able to receive the annual commission payments from Prudential.

When Mr and Mrs D became aware of these changes they approached Business A to raise the issue of the commission. It explained that it would no longer receive the commission but it also noted that because Prudential hadn't removed it as the agents for the Plan until 2014 two payments had been made to it – in 2013 and 2014 – that shouldn't have been. Business A made the decision to pay these amounts, plus interest, to Mr and Mrs D.

Mr and Mrs D then contacted Prudential to find out what would happen with future commission payments. Prudential said that the explanation of the deductions – commission, expenses, life cover, etc – given in the original illustration was generic. Although the specific amount of commission to be paid to Business A had been set out there'd been no indication that if the level of commission – or any of the other deductions – were to reduce then the overall charge paid by Mr and Mrs D would also be reduced proportionally. In short, Prudential felt the plan charges had been made clear at the outset and these had remained as shown.

Mr and Mrs D weren't satisfied with this response so referred their complaint to this service.

Our investigator thought Prudential had acted fairly so didn't think the complaint should be upheld. He noted Prudential's view that although the cost of commission was covered by the deduction of charges from the policy, there was no specific deduction in relation to the commission. So Prudential didn't offer a reduction in charges where no commission was being paid.

The investigator said that this meant that although Prudential had stopped paying commission to Business A it didn't mean the overall charges would decrease. The charges had remained the same as the illustration and ultimately it was at Prudential's discretion how the money received as charges would be used.

Mr and Mrs D didn't agree. They said, in brief, that the FCA had advised that there should be transparency in respect of commission. They, the client, funded the commission, which Prudential effectively paid on its behalf to the agent. Why, when this arrangement was no longer in place, was it fair for Prudential to decide to retain the balance of the commission payments?

As no agreement could be reached, the matter's been referred to me to review.

### **my findings**

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

I can understand why Mr and Mrs D have raised their concerns about the commission payments relating to their investment. The fact that their plan's term straddled the implementation of the RDR changes has acted to very specifically highlight the issue of commission and charges in general.

On the face of it, it seems there were clearly defined sums of money being paid by Prudential to Business A that, after the RDR changes, could no longer be made. This money had to then go somewhere else so why is it fair that it should be retained by Prudential rather than being paid to Mr and Mrs D, or any other planholder in a similar position?

The illustration provided to Mr and Mrs D contained some information relating to the charges and deductions:

*"What are the charges?"*

*The charges include the cost of commission, expenses (including the cost of life cover), any cash-in penalties and other adjustments. We take charges out of the plan every year."*

*"What are the deductions for?"*

*The deductions include commission, expenses (including the cost of life cover), charges, any cash-in penalties, implicit costs or charges for any guarantees and other adjustments"*

Prudential has said that these statements were intended to provide a generic explanation of all the various potential costs covered by the deduction of the charges from the plan. And I think that's a fair assessment. It was made clear at the outset what the actual monetary charge would be (I understand the annual management charge was 1.75%). There was no indication that any future variation in the different costs covered by the charge would result in a reduction in the charge.

I accept Prudential *could* have made the decision to pass on what was in effect a reduction in its costs. But I don't think I can reasonably conclude that it *should* have done. As noted, the annual charge reflected a number of underlying costs. For example, it's possible that some of these may have risen at the same time as the changes in commission payments were implemented, resulting in a minimal net change for Prudential.

I think the matter has also been a little clouded by Business A choosing to pay to Mr and Mrs D the additional 2013/14 annual commission payments received from Prudential. That was, of course, its prerogative. But I don't think that places an obligation on Prudential to do the same.

Ultimately Mr and Mrs D were told at the outset how much they would be charged for holding the investment plan. While the underlying sums relating to this charge may have changed the amount paid by Mr and Mrs D hasn't. As such, while I do have some sympathy with their argument, I don't think I can fairly conclude that Prudential has acted unfairly or incorrectly.

**my final decision**

For the reasons given, my final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs D to accept or reject my decision before 21 May 2018.

James Harris  
**ombudsman**