Ombudsman's Determination

Applicant	Mr Y
Scheme	F Fradley & Son Ltd Executive Scheme (**the Scheme**)
Respondent	Countrywide Assured plc (**Countrywide**)

Outcome

1. I do not uphold Mr Y's complaint and no further action is required by Countrywide.

2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr Y made a complaint in three parts following the full surrender of his policies in the Scheme. He said:

- the exit charges that were applied on the policy invested in the Managed Pension Fund are "illegal";

- the value of the policy invested in the Guaranteed Pension Plus Fund is approximately £6,500 less than it should be with no explanation given by Countrywide as to why; and

- the annual management charges on the Managed Pension Fund policy are "disproportionate and not applicable to the status of the fund".

Background information, including submissions from the parties

4. Mr Y had three policies under the Scheme with Countrywide. Mr Y took his retirement benefits early at age 55, whereas the Scheme's normal retirement age was set at age 65.

5. Following Mr Y's request to take his benefits in full, a gross taxable lump sum of £20,785.92 was calculated as at 8 July 2015, Mr Y's 55th birthday. After tax was deducted a cheque was issued on 13 July 2015 for £15,323.42.

6. On receipt of the cheque Mr Y complained to Countrywide about its charges and the proceeds of the Guaranteed Pension Plus Fund. Countrywide rejected the complaint and said:-

- The charges, as outlined in the terms and conditions and key features brochure, confirm that charges are based on any regular contributions made into the policy. A 5% management charge is taken annually from the units that were accumulated in the first two years the policy was taken out.

- The Guaranteed Pension Plus Fund is a With-Profits Fund, which has an annual management charge of 1.25% to cover the guaranteed element. The value of the policy, as part of the complaint investigation, has been confirmed as correct by Countrywide's actuarial department.

- Countrywide confirmed that all exit penalty charges were correctly applied, as stated in the terms and conditions. Countrywide has said that Mr Y has been advised of the difference in the "Transfer value" and the "Fund Value" over the term of the policy, and this difference is the exit penalty.

Adjudicator's Opinion

7. Mr Y's complaint was considered by one of our Adjudicators who concluded that no further action was required by Countrywide. The Adjudicator's findings are summarised briefly below:-

- The charges taken on the unit linked Managed Pension Fund policy depend on whether regular or lump sum contributions were made. Where a regular contribution has been made, 5% of the first two years units will be taken as a charge on an annual basis.

- This type of charging arrangement is not uncommon from the time that the policy was taken out. Mr Y has said that these charges should not have been taken as no further contributions were being made in the later years of the policy. The fact that monthly contributions stopped would only be relevant if they were to effect the charges taken, as described in the terms and conditions. They are not; the charging structure has been advised through both the key features document and the terms and conditions.

  - The terms and conditions state:-

    CHARGES

    For accounts linked to a unitised fund the following charges apply:

    (a) "Account charge

Each year until the planned retirement age stated at the outset or age 65, whichever is earlier, there is deducted from each member's account an annual charge of 5% of the balance of units allocated to that account in respect of

(i) The first two years' regular contributions, and

(ii) The first two years' of any increase in regular contributions in any account year over and above the highest total of regular contributions made in any previous account year, and

(iii) Any distributions on units allocated in respect of (i) or (ii) above."

- Mr Y has said that the value of the policy that was invested in the Guaranteed Pension Plus Fund is lower than it should be. This policy was invested in a With-Profits Fund that had a guaranteed element if held to age 65. Information has been sent to Mr Y that provides details of how the With-Profits Fund works on a regular basis which includes explanations of how bonuses are added. The With-Profits Fund works very differently from a unit linked investment such as the Managed Pension Fund he is investing elsewhere. These two types of funds cannot be compared in any way with regard to performance.

- The Adjudicator appreciated Mr Y's disappointment that the With-Profits Fund has not performed to his satisfaction, fund performance is not something this Office can review. Countrywide have checked that the correct bonuses have been applied and as such the Adjudicator could find no evidence that Mr Y had received less than his entitlement.

- Mr Y has argued that he should not have to pay the exit penalty that was applied to the regular contribution policy KW...DA. The charges taken on such policies are initially calculated based on funds being invested until the selected retirement date (age 65). If the pension benefits are taken early, the charges applied to the policy will be less over the lifetime. As such, many policies of this type will make provision within the terms and conditions to apply an exit penalty if the full term is not met. The exit penalty for this policy was calculated correctly in accordance with the terms and conditions of the policy.

- The terms and conditions state:

"If a member retires and starts drawing benefits before the planned retirement age, the amount available to purchase benefits at the actual date of retirement is determined as follows:

(a) In the case of a unitised account, the bid value of the units at the actual date of retirement, less a charge. The charge will be equal to 5% of the units to which the 5% annual account charge (see "Charges") applies for each year or part year between the actual and the original retirement date. The maximum charge will be 75% of these units. This charge does not apply to lump sum contributions or where the planned retirement age is later than age 65 and early retirement benefits are taken after age 65."

- All of the copy statements seen as evidence, from 2010 onwards, confirm the transfer value and fund value are shown as different, thus taking into account the exit penalty as described above.

- The actual level of annual management charge taken by Countrywide is a commercial decision for it to make, and decisions of this type are not a matter for The Pensions Ombudsman. Where a customer has signed up to a policy and has been correctly made aware of the charges, should they become dissatisfied they would be free to consider transferring elsewhere.

8. Mr Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr Y provided his further comments which do not change the outcome. In summary Mr Y has said:-

   - The account ceased to be a regular contribution account after F Fradley and Son Ltd went into receivership. The Scheme became frozen receiving no regular contributions for 22 years until paid out.

   - The Key Features or the terms and conditions do not cover what should happen to exit charges in the event of the employer going into receivership. After receivership the account became a lump sum as no further contributions were made.

   - The low value of the Guaranteed Plus Fund (With-Profits Fund) is as a result of the charges taken. Countrywide were not authorised as it had been agreed with F Fradley and Son LTD that no charges could be taken.

   - A previous statement issued by Save and Prosper, before F Fradley and Son Ltd went into receivership does not show a management charge deduction on the With-Profits Fund. The statements issued by Countrywide do not have a breakdown of charges that they subsequently admitted to being 1.25% per annum annual management charge, and a 1.5% per annum charge to meet the cost of providing the minimum benefit guarantees. It is these unauthorised charges that have affected the value of the policy.

9. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr Y for completeness.

Ombudsman's decision

10. The charging structure on the managed funds did not change on F Fradley and Son Ltd going into receivership. The charges continued to be based on how the contributions to the Scheme were initially made. Mr Y's initial regular contributions were "uplifted" and this meant that when monthly contributions of £80 were made, the sum of £81.60 was actually invested. This regular contribution uplift was not reversed

and treated as a lump sum contribution at a later date. On surrendering the policy the charges applicable are those relating to regular contributions.

11. The key features document does not have to describe what happens if the company goes into receivership. The charging structure is applied as to how the initial contributions were made, in this case regular contributions. I appreciate that regular contributions stopped when the company went into receivership, which is not an event that would have been foreseen when the policy was first taken out. However, this is not relevant to how the charges are structured and it does not mean that Countrywide cannot make the charges.

12. The way charges are deducted are very different on With-Profit policies, as opposed to unit trust policies also held by Mr Y. The With-Profits policy held by Mr Y has a charging structure where any annual management charges, or charges taken for the guarantees, are taken first from the actual With-Profits fund itself. Mr Y was a member of this fund, along with many other policyholders (members). It is only after these charges are deducted that the underlying share of assets attributable to each policyholder is calculated, which would in turn relate to the value of the With-Profits Fund for each member.

13. No specific charge relating to Mr Y will show as a deduction on any statements in respect of the With-Profits Fund. Statements will simply show an estimated transfer value, confirming it is for “illustration purposes only”. The statements did however confirm the guaranteed minimum value of £6,040.03, which would have been paid had Mr Y taken his benefits at age 65, the normal retirement age.

14. Save and Prosper are now part of the Countrywide group. Mr Y has said that F Fradley and Son Ltd negotiated that no management charges were to be taken on the Save and Prosper With-Profits Fund. However, no evidence of that exists. In view of the charging structure of the With-Profits Fund, as outlined above, it does not seem possible that such an individual one off arrangement could have been made.

15. Therefore, I do not uphold Mr Y’s complaint.

Anthony Arter

Pensions Ombudsman
15 November 2017