Ombudsman's Determination

Applicant	Mr N
Scheme	Zurich Executive Retirement Plan (**the Plan**) Policy No: P00319-033-BE/062 (**the Policy**)
Respondent	Zurich Assurance Ltd (**Zurich**)

Outcome

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

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

Complaint summary

3. Mr N complains that Zurich provided him with inadequate and misleading information about the potential returns on his investment in the Plan Policy and also the charges applicable to it for over 30 years. He contends that the lack of transparency and accuracy in the information supplied inhibited him from making decisions such as switching investments and transferring his pension rights to another provider. He is also dissatisfied with how Zurich subsequently handled his complaint about the poor administrative service which he has received for the Plan and the Policy.

Background information, including submissions from the parties

4. The Plan was set up in 1983 by Woolf Project Management Ltd (**Woolf**), the Principal Employer and Trustee.

5. Mr N established the Policy in March 1987 when he completed and returned the application form (**the Form**) to Zurich. By signing the Form, he declared to Zurich he understood that a copy of the Plan's Provisions (**the Provisions**) was available to him on request from Woolf.

6. The Form showed Mr N had requested that the Policy contributions should be invested wholly in the Managed Fund.

7. Appendix A of the Provisions specified that:

> "The Expense Charge and Mortality Cost applicable to this Policy will be calculated and charged in accordance with the following provisions. These calculations will be carried out on the Commencement Date and on the first day of every month thereafter…
>
> The Expense Charge is an amount not exceeding the Indexed Policy Charge and is adjusted from time to time. The adjustment will be such as the Actuary, in his absolute discretion, considers appropriate…
>
> The Indexed Policy Charge…will be adjusted by the same percentage and at the same time as any adjustment to the Expense Charge…
>
> The Expense Charge of the Policy and the Mortality Cost of the Layers forming part of the Contribution Protection Benefit (**CPB**), will be met by cancelling sufficient units valued at their Bid Prices at the time in one fund at a time in the following order…"

8. The Expense Charge covered the cost of the day to day administration of the Policy as well as the annual renewal and was deducted from units regardless of whether contributions were being made or not. As at May 2018, it was £11.25 per month.

9. The CPB provided protection of the contribution payments towards Capital units in the Policy. Without this, Zurich would only pay the value of the Accumulation units on death before retirement of a member. The cost of the CPB varied depending on age and increased annually at each renewal. It was £2.89 per month as at May 2018.

10. Appendix B of the Provisions showed that:

> "Annual Charge
>
> A charge at the rate of ¾% pa of the values of the investments of the funds as determined by the Actuary is deducted from the funds at the valuations thereof…
>
> Capital and Accumulation Units
>
> Each fund consists of two parts, each divided into shares called respectively Accumulation units and Capital units…
>
> In each fund, the income less such expenses and outgoings of the investments of the fund attributable to the part represented by Capital units accrues to and is incorporated in that part of the fund to the extent that it exceeds the rate of 3.5% pa of the value of the Capital units, and any shortfall below that rate is deducted from such part. These adjustments are made at the valuations of the funds."

11. The Annual Charge covered the cost of the day to day investment and management of the investment fund(s) held in the Policy. The additional charge of 3.5% pa covered the cost of setting up the Policy and administering each new contribution paid into it.

Both these charges are paid by reducing the unit price of the investment fund(s) and consequently taken from investment growth rather than from a monetary deduction from the Policy.

12. Mr N received a schedule showing that the Indexed Policy Charge and CPB would be taken from the monthly contributions payable into the Policy. The schedule also stated that:

> "This Policy is issued in consideration of the payment of the contributions specified in the above Schedule and is issued subject to the Schedule and the Policy Provisions. The Policy is issued upon the basis of the proposal and application forms and any other statements made by the Employer or the Member…"

13. Woolf paid gross pension contributions of £3,042.41 into the Plan Policy for Mr N between March 1987 and June 1988.

14. Mr N received annual benefit statements showing: (a) the current Policy fund value, (b) details of the investments into which the fund was invested and (c) the estimated pension benefits which could be purchased with the fund.

15. On the statements sent to Mr N, up to the one issued in February 2015, the following paragraphs were shown:

> "**The Effect of Inflation on Your Pension**
>
> Inflation reduces what you can buy with your pension. To give you an indication of what your pension could buy when you retire, we have adjusted it for the effect of inflation…
>
> We have calculated your pension in today's money using these standard assumptions:
>
> - You will not make any further payments.
> - Your retirement fund will grow at 7%* each year.
> - Future inflation will be 2.5% each year.
> - Your pension will be paid at the start of each month for your lifetime and will increase by 2.5% each year.
> - If you die after you have retired, your spouse will continue to receive half of the pension. For this purpose, we have assumed that your spouse is 3 years younger than you.
> - Alternatively, you could choose a pension that is only paid during your lifetime…
>
> These figures are only examples and aren't guaranteed…
>
> Your actual pension income could be more or less than this and will depend on how much you pay in, how your retirement fund grows and interest rates and annuity rates at the time you retire.

All firms use the same rates of growth for projections, but their charges vary. They also use the same rates to show how funds may be converted into pension income.

This projection and the assumptions we have used are set by government regulations and may not relate directly to your personal circumstances.

You should not make decisions about your pension arrangements based on this projection alone."

*This figure was: (a) 7% on the 2004-2009 statements, (b) 6.5% on the 2013-2014 statements and (c) 6.6% on the 2015 statement.

16. These paragraphs were replaced in subsequent annual statements sent to Mr N by:

"We've estimated your pension using some standard assumptions. We've detailed these on the following page".

17. The "following page" showed that:

"**Your Illustration Assumptions**

The illustration of "what you might get when you retire" uses the following assumptions:

- Your retirement fund will grow at 3.6%* after inflation each year. We assume different growth rates depending on the fund(s) your plan is invested in.
- Future inflation will be 2.5% each year.
- You will not make any further payments.
- The scheme will continue to be a registered pension scheme.
- Your pension will be paid at the start of each month for your lifetime and will increase by 2.5% each year – no spouse or civil partner's pension will be payable

Our estimate of your retirement fund and how much pension you'll get each year is based on these assumptions. How much you actually get will depend on how much you pay in, actual growth and inflation rates and the options you choose when you retire.

For example, if you choose for part of your pension to continue to a dependent after you die, you'll get less than if you choose for it to be paid for your lifetime only. Or, if you choose a level pension, to start with it will be higher than a pension that increases each year but over time inflation will reduce how much it will buy."

This figure was shown as 3.6% on the 2016 statement, 3.4% on the 2017 statement and 2.1% on the 2018 statement.

18. In May 2018, Zurich sent Mr N a “Full Plan Details” pack on request. The pack included a statement showing the current Policy fund value of £5,268.37, a unit statement from the commencement date of the Policy and comprehensive details of the different charges applicable to it in monetary terms where appropriate.

Mr N’s position

19. Mr N says that prior to May 2018, Zurich had failed to adequately provide explicit details of these charges applying to the Policy or explain that they were causing the Policy fund value to diminish in real terms.

20. In his view, it was unreasonable for Zurich to have:

- calculated his projected retirement benefits using assumed returns which were overly optimistic for many years and not reduced until recently;
- changed the way in which the assumptions made were described on statements and thus making comparisons of the projected benefits difficult;
- used assumptions for investment returns which did not specify whether they allowed for the Policy charges;
- failed to bring to his attention the lack of real growth in his investment in the Policy.

21. He says that Zurich did not give him a choice on how the contributions into the Policy should be invested and only brought to his attention the option to switch in investment funds during the complaint process. But even if Zurich had pointed this out to him earlier, he considers that there was no reason for him to switch because Zurich had not made clear the negative effect of the charges on investment growth on the Managed Fund. Mr N contends that this lack of transparency prevented him from making informed decisions for the Policy at the appropriate time and denied him an opportunity to mitigate the loss caused by these charges. In his view, Zurich should have reduced the charges when it became apparent that the growth of the investment funds was being significantly reduced by them. He believes that if Zurich had adopted “a more reasonable approach to the scale and method of applying charges” the Policy fund value would now be around £10,000.

22. Mr N says:

> “How can it possibly be right or reasonable that…Zurich is allowed to hide behind small print…that were never in the ensuing years, restated to me in any form?
>
> …this would have been my first ever private/work pension, I doubt that I would have had any detailed understanding of the consequences of the small print…the extent of my involvement was an instruction from my employer to sign the documents.
>
> For the years when I was receiving statements from Zurich…they consistently told me that my pension fund would be growing…Whilst these statements did

warn me about the effect of inflation none of them ever warned me about the effect of fees/charges…Zurich were completely silent on the matter of fees/charges until I requested information in 2018…

As we can now see, the fund was unlikely to actually grow at the forecast rates since, it transpires, Zurich were taking that growth and more in fees and charges that at no time were identified or warned about on any statements; if they were happy to warn me about the effect of inflation, why were they not happy to warn me about the effect of fees and charges? Without such information, I had no reason to question the fund value at any time and accepted the information on the statement in good faith.

Zurich gave me no opportunity to come to an informed opinion that my fund was reducing not growing because they failed to provide information for me – information that I did not know because they did not reveal it when there was ample opportunity to do so. On the contrary, the information provided in the statements when read on receipt would give no cause for concern and in fact gave me confidence that I had a fund growing at 7%, 6.5%, 6.6%, 6.2% etc! With this information I would have had no reason to even compare with prior year statements – I trusted what they were telling me."

Zurich's Position

23. It has administered Mr N's Policy in accordance with the terms and conditions upon which it was set up. It has applied the charging structure as described in the Provisions which formed a non-negotiable contract between Mr N and it.

24. The schedule which Mr N received at inception of the Policy made plain what charges were payable and stated that the Provisions applied to the Policy.

25. All annual benefit illustrations are based on assumed growth rates which are determined for the pension industry by its regulator, the Financial Conduct Authority (**FCA)**. There is no guarantee that an investment fund will achieve the growth rates shown on these illustrations.

Adjudicator's Opinion

26. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by Zurich. The Adjudicator's findings are summarised below:-

- In accordance with the Provisions, Zurich are entitled to impose the charges at the level that has been applied to the Policy.

- It is not for the Pensions Ombudsman to impose charging policies onto providers. Zurich are entitled to exercise its commercial judgment when setting its fees, and the charges which it has applied, are lawful.

- Generally, all personal pension providers produce annual statements for their clients including an illustration of their projected benefits at their selected retirement dates. The assumed growth rates for different types of investment funds are based on rules set out by the FCA for pension projections. These rules are reviewed regularly by the FCA and the assumed growth rates are subject to change. Zurich was only complying with these rules when changing the assumptions and how they were described on the annual statements.

- There is no guarantee that an investment fund will achieve the growth rates shown on the statements, Actual rates of return may be higher or lower. All the statements which Mr N received included a proviso that it was not a promise or guarantee that a pension would be paid at the rate shown and his income could differ significantly from the amount shown.

- A rough calculation of the return on the investment(s) held in the Policy could easily be made by comparing their values shown on the appropriate annual statements. If Mr N had performed such calculations and was concerned that the actual investment performance was significantly lower than expected, it was reasonable to assume that he would have raised this with Zurich and taken appropriate action much earlier to mitigate the financial loss which he believes he has suffered from poor investment performance and excessive charges applied to the Policy.

27. Mr N did not accept the Adjudicator’s Opinion and the complaint was passed to me to consider. Mr N provided his further comments which do not change the outcome. I agree with the Adjudicator’s Opinion and I will therefore only respond to the key points made by Mr N for completeness.

Ombudsman’s decision

28. Mr N complains that at no point after the Policy was set up in 1987 did Zurich supply him with explicit details of the charges applicable to it. I agree with the Adjudicator that Zurich could perhaps have been more helpful to Mr N by providing useful information about these charges on the annual statements.

29. I cannot, however, ignore the fact that Zurich had provided Mr N with a schedule at Policy inception which brought to his attention that a copy of the Provisions fully describing these charges was available on request. It had therefore been open to Mr N to request a copy if he was interested in learning more about how they were applied and their negative effect on the calculation of the Policy fund value.

30. Indeed, I note that when Mr N sought further information about the Policy in 2018, Zurich did exactly this and provided him with a response which included adequate details of the charges applicable to the Policy.

31. Whilst I fully appreciate Mr N's points of view on this matter, as sufficient information about the charging structure had been provided from the outset in the schedule and the Provisions on request, I do not consider that there was any maladministration on the part of Zurich for not explicitly informing Mr N annually, on the statements, how the charges were deducted from the Policy.

32. Although I sympathise with Mr N's circumstances, I do not uphold his complaint.

Anthony Arter

Pensions Ombudsman
17 April 2019