

The complaint

Mrs P has complained about advice she received from The Prudential Assurance Company Limited to contract out of the State Earnings Related Pension Scheme (SERPS) and set up a personal pension instead.

What happened

Mrs P took advice in 1991. She set up a personal pension plan which received national insurance rebates for three years. The plan is still active. The funds were invested in Prudential's with-profits fund.

Mrs P's representatives say that the advice was unsuitable. They say that the with-profits fund was unsuitable because it was expensive and lacked transparency. And that investing in a single fund meant there was a lack of diversification.

Our investigator didn't think the complaint should be upheld. He explained that when the government began to allow contracting-out of SERPS, no advice was given about who should and who shouldn't contract out. This led to pension providers making projections of future benefits and comparing these with potential SERPS benefits. The rebates were arranged in a way that meant age and earnings were key factors in assessing whether an individual was likely to be better off by contracting-out. In this case Mrs P's age and earnings met the criteria suggesting she may be better off.

The investigator added that he didn't think the with-profits fund was unsuitable. It was made clear that this was the only fund available for Mrs P's investment. He felt that the with-profits fund matched Mrs P's attitude to risk, and it was invested in a wide range of assets so there was no lack of diversification.

Mrs P's representatives didn't agree and said that advice to invest in a single fund was unsuitable. The with-profits fund was expensive and included smoothing which Mrs P didn't need given that she was investing for over 35 years. They added that advice to invest in a single fund wouldn't be considered good advice now, and so it wasn't good advice in 1991.

As no agreement has been reached the case has been referred to me for a decision.

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.

I agree with the investigator and with his reasoning. I don't uphold this complaint.

When the Government decided to allow individuals to contract out of SERPS (and offered incentives to do so), it didn't give advice about who should be advised to remain in SERPS and those for whom it was anticipated that contracting out would be beneficial. To provide some clarity and guidance, pension providers made comparisons of the projected benefits from SERPS with those from a personal pension. These calculations were based on what

were felt to be conservative assumptions of likely future investment returns at the time. In drawing up these comparisons, two key criteria were considered; age, and earnings.

One of the attractions of contracting out of SERPS at an early age is that the younger someone is, the longer there is until retirement. So there is a greater chance that a personal pension could perform better than SERPS over this longer period. The age at which the provider's advice whether to contract out or not changed, is known as the 'pivotal age'.

Mrs P was 25 years old when she contracted out and was under Prudential's pivotal age.

Mrs P's annual earnings were also above Prudential's minimum guidelines for contracting out. This meant that the national insurance rebates would be considered sufficient to justify contracting out.

As Mrs P's age and earnings met the key criteria, the advice to contract-out doesn't seem to be unsuitable.

And I don't think the with-profits fund was unsuitable for Mrs P's investment. Whilst her pension was invested into a single fund I don't think this meant there was a lack of diversification. The with-profits fund invested in a wide range of assets. This fund also matched Mrs P's attitude to risk, 'cautious'. The documents from the time clearly set out that this with-profits fund was the only one available to Mrs P at that time.

The personal pension was recommended by Prudential, and not by an independent financial adviser who may have considered a wider range of products.

In making this determination, I must consider the standards that applied at the time the advice was given. The advice was given almost 30 years ago. The projections of future benefits that were made at that time, and which Mrs P may have relied on, may not have proved to be correct, but they were only projections and there were no guarantees that Mrs P would be better off. I'm sorry that she may have lost out, but I'm not satisfied that the advice she received was unsuitable for her.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 1 July 2020.

Keith Taylor
Ombudsman