

## The complaint

Mr N complains about the advice he was given by The Prudential Assurance Company Limited (Prudential) to contract out of the State Earnings Related Pension Scheme (SERPS) in 1988. He says his state pension is lower than what he expected it to be as a result of contracting out of SERPS into a personal pension and wants the difference to be made up by Prudential.

## What happened

In September 1988 Mr N met with an adviser from Prudential and agreed to contract out of SERPS through an appropriate personal pension. He also agreed to set up a separate personal pension and made regular contributions of £30 per month. Prudential confirmed that it received national insurance payments for Mr N's contracted-out plan until 1994/1995.

In 2013, when Mr N was 65, Prudential sent him confirmation of the benefits it would be providing from his contracted-out plan. The letter said that Prudential would pay Mr N tax free cash of £5,010.18 and an enhanced guaranteed annual annuity of £682.68 from his fund of £20,040.73.

Mr N has also been receiving his state pension. He noticed, in the letters he received each year about his forthcoming payments, that a "*contracted-out deduction*" was being made to his overall benefit. He said that in this year's letter dated 29 February 2020 – the deduction was £16.46 per week for the forthcoming year. So, Mr N complained to Prudential. He said he thought he'd been misled into opting out of SERPS and didn't understand why a deduction had been made. He said Prudential hadn't made him aware that he'd be worse off as a result of contracting-out of SERPS.

Prudential didn't uphold Mr N's complaint. It said it had followed the guidelines to contract him out of SERPS and had reviewed his situation – and whether he should remain contracted out, thereafter. It said it was satisfied with the appropriateness of the funds that Mr N was invested into and apologised if their performance hadn't lived up to his expectations.

But Mr N wasn't happy with the response and brought his complaint to us, where one of our investigators looked into the matter. She said the complaint shouldn't be upheld. She thought that the advice had been suitable, and that Mr N hadn't been given any guarantees about what he might receive. She also thought that the adviser wouldn't have known what kind of pension the fund would produce at retirement when he first gave the advice – so she didn't think Prudential was at fault. She also noted that Mr N had benefitted from a tax-free cash lump sum from the pension plan.

Mr N disagreed. He said he was told by Prudential that contracting out of SERPS would increase his pension provision but instead it seems to have reduced his state pension by around £900 per annum.

He still believed he'd been mis sold the plan as he said he wouldn't have agreed to go ahead if he'd known he'd be worse off.

So as no resolution could be found the complaint's been passed to me for a review.

### **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.

Having done so I agree with the investigator and for broadly the same reasons. I can see Mr N feels strongly about this matter and I have some sympathy for his position as he believes he's now worse off as a result of Prudential's earlier advice. But I can't safely say Mr N is worse off and, in any case, I don't think the advice was unsuitable. I know this outcome will disappoint Mr N – so I'll explain my reasons.

#### *Was the advice to contract-out suitable*

SERPS was an addition to the state pension built up by national insurance contributions. But it was possible to contract out of SERPS through an occupational pension scheme, or for those individuals without such access through a personal pension. There's nothing to suggest Mr N had access to an occupational scheme so if he wanted to contract out – he needed to divert his national insurance contributions to a personal pension.

In 1988 there wasn't a requirement for a provider to carry out a detailed fact find or provide a recommendation letter if it advised an individual to contract out of SERPS. The main factors that were used to determine whether someone was likely to be better off as a result of such advice were age, earnings and the investment horizon (time to retirement age). Mr N was under the pivotal age for men at the time of the advice; and had annual earnings above the relevant lower earnings limit. And there were around 25 years before his intended retirement age.

So, for those reasons, I don't think advice to contract out of SERPS could be considered unsuitable. And I'm satisfied that – based on what was known at the time, the advice was appropriate and provided Mr N with a reasonable prospect of greater benefits at retirement. So, I don't think Prudential did anything wrong when it advised Mr N to contract out of SERPS. I can also see the recommendation was made to invest in the default, relatively cautious with-profits fund. Given Mr N's age and financial experience at the time I think that's a reasonable fund recommendation to have made.

#### *The issue of whether Mr N was made aware of the effect of contracting out on his overall state pension provision.*

Alongside his complaint about the suitability of the advice from 1988, Mr N has complained that he wasn't told his state pension would be reduced as a result of contracting out of SERPS – or that he'd actually be worse off. He says he wouldn't have agreed to go ahead if he'd known that.

But, having looked carefully at all the information Mr N was provided with at the time, I can find no evidence to show that Prudential made any promises or guarantees about what he'd receive in retirement. I've seen a copy of the original application form which stated, "*have you told the client that contracting out of SERPS by itself will be insufficient to provide an adequate income at retirement*". This question was answered yes.

And the only guide I've seen which illustrated what Mr N might receive from his plan, which was based on an assumptive contribution, noted he might get an initial annual pension of £72 or £38 based on two different assumed rates of investment returns. The notes around these benefits said that "*the two amounts do not represent the upper and lower limits of the*

*possible amount of the benefit. The actual comparison with the SERPS benefit given up will be affected by the bonuses added to the policy, the terms ruling at the date of retirement for converting cash into annuity and future increases in national average earnings”.*

So, although I can't say what was discussed between Mr N and the adviser in 1988, I think that within the information Mr N was provided with was an explanation that there was no guarantee of the amount he'd receive at retirement and no guarantee that it would exceed the amount given up within SERPS. And I don't think it would have been possible to answer that question until retirement, because of the fluctuating nature of investments and possible changes in legislation around state pensions. So while I don't dispute what Mr N says he was or wasn't told in 1988, I think he was made aware of that fact that nothing was guaranteed.

I've also seen a copy of the evidence Mr N has provided regarding the 'loss' of £16.46 per week due to having been contracted out of SERPS. But I don't think the letter proves that Mr N has necessarily *lost* that amount of income due to Prudential's advice from 1988. I think it shows Mr N the breakdown of how his total state pension is calculated – which is a combination of the additional state pension he'd accrued before and after 1997, but minus the amount he didn't qualify for, being the period for which he was contracted out.

I don't know if Mr N has other periods when he was contracted out of SERPS, but I think the overall consideration of his position should include what separate benefits he has or is receiving for the periods he was contracted out of SERPS. In addition to the state pension Mr N would at least need to include the amount of pension and tax-free cash he receives from the Prudential plan to gain an overall picture of his situation.

But, in case, whatever Mr N's position with regards to his overall pension income, I can't safely say it's affected by the suitability of the advice he received in 1988. I don't think the advice to contract out of SERPS was unsuitable and I haven't seen that Prudential made any guarantees about what Mr N might receive from the new plan. It's unfortunate if Mr N had higher expectations of what he might get from the plan, but I couldn't uphold a complaint that was purely about the performance of an investment unless I could safely say that that plan wasn't suitable – which in this case I think it was.

### **My final decision**

For the reasons that I've given I don't uphold Mr N's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 23 September 2020.

Keith Lawrence  
**Ombudsman**