

## **The complaint**

Mr O complains that he was given unsuitable advice to opt out of the State Earnings Related Pension Scheme (SERPS) by The Prudential Assurance Company Limited, causing him a potential loss in retirement benefits.

## **What happened**

The details of this complaint are well known to both parties, so I won't repeat them again here. The facts are not in dispute so I will focus on the reasons for my 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.

Having done so I agree with the investigator for these reasons:

- Prudential have already accepted that Mr O shouldn't have been advised to opt out of SERPS in 1992. So it isn't necessary for me to comment on the suitability of that advice.
- Prudential made an offer to Mr O to put him into the position he'd have been in if he hadn't opted out. They've suggested returning the National Insurance (NI) rebates, that were received into Mr O's pension scheme, to the Department for Work and Pensions (DWP). If DWP will accept the return of those rebates then I'm satisfied that the value of the SERPS part of Mr O's state pension will be returned to what it would have been had Prudential not received the contracted out rebates.
- I think that returning Mr O's Prudential pension to the position it would have been in had the NI rebates not been received would also be fair if the rebates are returned to DWP. This is because it's part of returning Mr O to the position he'd have been in if Prudential hadn't provided unsuitable advice.
- Prudential offered an alternative means of compensation if the DWP are unable to accept the rebates back. They explained that they'd work out the capital value of the future SERPS (now S2P) benefits Mr O would have received if the rebates hadn't been made to the personal pension and compare that to the value of the rebate fund to ascertain if there's a loss. Where that identifies a loss, compensation will be paid into Mr O's personal pension so that his benefits are the same as the lost SERPS benefits. I'm satisfied that this is a fair alternative way to put Mr O into the position he would have been had the NI rebates not been paid into his Prudential pension.
- Mr O informed me that he doesn't think that re-instating him into SERPS puts him back into the position he'd have been, because the advice altered his retirement planning. I've considered these concerns, but still believe that what Prudential propose is a fair and reasonable way to address their mistake. Our service tries, where possible, to put consumers as closely into the position they'd have been in

things had happened as they should've. In this case, that means Mr O wouldn't have been advised to opt out of the SERPS. So, he'd never have received the NI rebates into his personal pension and his contributions would have added to the value of the SERPS part of his state pension instead. Which is what Prudential's suggested redress achieves.

- In addition to returning Mr O to the position he should be in, Prudential have offered £100 for the trouble and upset this caused him. Mr O is 49 years old, so some years away from being able to take his personal pension or state pension. Which means he hasn't suffered any loss of pension income. So the impact on him relates to his retirement planning and expectation for his future pension. I therefore think that the offer of £100 fairly compensates Mr O for the trouble and upset Prudential's mistake caused.

### **My final decision**

The Prudential Assurance Company Limited has already made an offer to put Mr O into the position he would have been and pay him £100 compensation. I think this offer is fair in all the circumstances.

So my decision is that The Prudential Assurance Company Limited should compensate Mr O in the manner they have proposed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 1 July 2021.

Gary Lane  
**Ombudsman**