

## The complaint

Mr W through his representative has complained that he was given unsuitable advice to contract out of the State Earnings Related Pension Scheme (SERPS) by The Prudential Assurance Company Limited (Prudential).

## What happened

I issued a provisional decision setting out the background to the complaint and my provisional findings which is set out below for reference and forms part of this decision:

*'Mr W met with an advisor in July 1988 and was advised to take out a personal pension with Prudential and contract-out of SERPS. It was recorded at the time of sale that Mr W's annual income was £11,000 and he was 40 years old.*

*The Prudential representative referred to its in-house checks and considered that Mr W met the criteria which suggested contracting-out could be beneficial for him. An illustration was prepared for Mr W and he agreed to take out the personal pension and contract-out of SERPS. Once Mr W was contracted-out, a proportion of his National Insurance Contributions were rebated to be invested in Prudential's With-Profits Fund instead of going into SERPS. The date of contracting-out was backdated to 1987 so that Mr W could include his rebates from that year. Prudential received contributions from Mr W from 1987 through to 2000.*

*Then in early 2020, Mr W's representative complained to Prudential about the advice to contract-out of SERPS on his behalf. In summary, the complaint points raised were:*

- *Mr W shouldn't have been exposed to the risk of significantly lower retirement income in contracting-out.*
- *Mr W wasn't informed of, and shouldn't have been exposed to, unnecessary fund costs.*
- *Mr W was exposed to a pension linked to the stock market in favour of valuable guarantees within SERPS – such as inflation protected benefits*
- *A fair and balanced comparison of the alternatives wasn't carried out*
- *The advice was in breach of the regulator's rules at the time. And the common law duty to act with reasonable care and skill, to disclose material information regarding risks costs and available alternatives, in order to allow informed consent.*

*Prudential rejected the complaint. It explained that Mr W met its criteria drawn up to establish whether contracting-out was likely to be beneficial. And that it would've explained at the time that it wasn't guaranteed that Mr W would be better off.*

*Our investigator looked into the complaint but didn't recommend that it should be upheld. He explained it was fair at the time to consider that Mr W would likely be better off contracting-out. The investigator was satisfied Mr W would've been provided with the relevant information about the policy and the costs involved. He concluded that the advice hadn't been unsuitable.*

*Mr W's representative responded to say that the investigator had failed to properly address the issues, specifically that:*

- *Mr W was not warned of the substantial risk that the personal pension benefits would not match what he was giving up in SERPS.*

- He was not told that it could cost him tens of thousands of pounds throughout retirement. Had he been warned he wouldn't have taken that risk
- The law requires that advisers warn their clients of material risk. Since this did not happen the complaint should be upheld.
- LAUTRO (Life Assurance and Unit Trust Regulatory Organisation) (the relevant rules at the time) say 'that the adviser shall give all information relevant...and use his best endeavours to enable the investor to understand the nature of any risks involved'. Mr W's representative says it's quite clear and not in dispute that Mr W wasn't given this information.
- Common practice (in the 80's and 90's) to contract-out of SERPS doesn't make it good practice. There is a crucial difference.
- What pension providers' actuaries perceive to be conservative assumptions, should carry no weight with the ombudsman service. Actuaries employed by life offices are conflicted and will work in the firm's best interests.

The investigator responded and said he was still of the view that the advice was suitable. And that it would not be fair to hold the advice given to today's standards. As Mr W's representative didn't agree the case was referred for a final 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.

#### What is it I need to decide?

The issue I need to decide is whether the advice to take out a personal pension and contract Mr W out of SERPS in 1988 was unsuitable based on the circumstances at the time.

#### The relevant standards at the time of advice

Mr W was advised to contract-out of SERPS in July 1988. Prudential was a member of LAUTRO at the time so this advice was covered by LAUTRO's rules.

LAUTRO set out a code of conduct for advisers to abide by when dealing with customers. The overriding principle was that advisers were required to exercise 'due skill, care and diligence' and 'deal fairly with investors'.

The code of conduct required advisers to give 'best advice', which included:

L.6 (a) shall give the investor all information relevant to those dealings and that information shall in particular include the information referred to in paragraph 6A below;

(b) shall use his best endeavours to enable the investor to understand the nature of any risks involved; ...

(c) shall not make inaccurate or unfair criticisms of other investment contracts or of any other method of saving or investment, or of any occupational pension scheme or the State earnings-related pension scheme ...

**L8. (1)** A company representative shall, in advising an investor as to the suitability for that investor of any investment contract, have regard, in particular, to the investor's financial position generally, to any rights he may have under an occupational pension scheme or the State earnings-related pension scheme, (if such rights are relevant in the particular case) and to all other relevant circumstances; and he shall use his best endeavours to ensure –

(a) that he recommends only that contract or those contracts which are suited to that investor' There were also common law requirements: not to make negligent mis-statements; to disclose all material information (where information was given); to advise with reasonable skill and care (where advice was given). I've taken these into account. But as I consider the LAUTRO rules to have closely

mirrored these requirements and to have imposed higher standards, I've focused on the LAUTRO standards when looking at the advice given to Mr W in 1988.

### Historical context around SERPS

At the time of advice, the government had only recently decided to allow individuals via an appropriate personal pension to contract-out of SERPS.

If an individual contracted-out of SERPS using a personal pension, instead of a proportion of their National Insurance contributions being used to top up their SERPS, they instead received rebates that would be invested in a fund with their pension provider. With the idea that this fund would outperform the SERPS mechanism for growth, which was based on the National Earnings index.

The Government wanted to give individuals more choice about how their pension was provided and it wanted to shift pension provision from the state to the private sector. To do so, a critical issue to decide was the level of rebate applied. If the rebates were set too low then the SERPS pension given up would likely be worth more than the investment within the personal pension. If the rebates were set too high, then the government would be paying more than it needed to, to offset the cost of its SERPS liabilities.

The level of rebate for contracted-out individuals was set by the government after taking advice from the Government Actuary's Department (GAD). When contracting-out began, the GAD's recommendations on the rebate levels were criticised as being too generous. Nevertheless, in addition to the rebate level suggested by GAD, the government added an additional 2% annual incentive payment, that would apply until 1993.

The rebate % level was set as standard for all. This however, meant it was less beneficial for older people, as they had less time before retirement to benefit from investment growth on their rebates. So for older people the comparative benefit given up in SERPS likely would outweigh that received by contracting-out.

The Government didn't give advice as to who should be advised to remain in SERPS and for whom it was expected that contracting-out would be beneficial, this was for the market to consider. But it was clear to all, that age was the key factor.

So the actuaries at various pension providers, such as Prudential, carried out comparisons of the projected benefits from SERPS (based on the National Earnings index) against its alternative personal pension arrangement (based on LAUTRO set assumptions of likely future investment returns) to decide who would likely benefit.

The ages where the provider's advice as to whether to contract out or not changed, were called pivotal ages. There was also a lower earnings limit which was used to determine whether an applicant's earnings would be enough to benefit from contracting-out.

At the time the Bank of England base rate was fluctuating between 9 and 10%, so rates of return were high. And it was generally expected that the rates of return within a personal pension would likely outstrip the guaranteed benefits within SERPS for those below the pivotal age in that particular year. And the Government deliberately set rebates at a level that would encourage people to contract-out.

### LAUTRO and SERPS

LAUTRO communicated rules, guidance and information to the industry through regular bulletins. LAUTRO also employed enforcement staff that carried out periodic inspection visits of its members to confirm that its guidance had been adhered to.

LAUTRO required its members to present its illustrations for customers considering contracting-out in a specified way. Firms were required to use a premium for illustration purposes of the minimum rebate payable for that year. And the projections were set at two specified rates. The rates used, were what LAUTRO called real rates of return (taking into account the effects of inflation). The rates of return were set as 0.5% and 2.5% above the National Average Earnings index and the projections were to include charges. If real rates of return weren't used, the corresponding nominal rate of return could be

used of 8.5% and 13% inclusive of charges. LAUTRO referred to these rates of return as being conservative.

Furthermore, LAUTRO required the annuity illustrated to be on a comparable basis to that of the SERPS pension paid. So the annuity bases had to take into account indexation, and would increase at 3% per annum. The annuity projected would also include a 50% spouses' pension to mirror SERPS.

LAUTRO produced projection tables based on its rate of returns. The tables included what I understand was an aggregate or assumption of standard industry costs. These projection tables allowed the user to look at a particular salary and then cross reference with age, to show the potential contracting-out benefit at two rates of return, against the corresponding SERPS benefit given up for that year. This gave a rough guide as to who could benefit from contracting-out.

LAUTRO had received requests to specify the pivotal ages itself but declined. And put the emphasis back on product providers to establish their own pivotal ages based on their own product terms and charges.

Within its bulletins LAUTRO said it believed firms should provide their representatives with clear indications based on appropriate actuarial assumptions of what the pivotal ages were for men and women when giving advice. But it reminded its members of the principle of best advice and in particular point 8.1 of its code of conduct, to take into account an individual's circumstances. This was in relation to some of its members commercial advertisements not giving any indication to whom contracting-out may not be suitable for.

#### What Prudential did

At the time of the advice, the pivotal age and minimum salary at which Prudential considered it likely men would benefit from contracting-out of SERPS was aged below 45 and earnings over £5,000 per annum respectively. Prudential's calculations took into account the charges that would be applied to that particular product. It's assumed rate of return in carrying out these calculations was 8.5%. This is in-line with the LAUTRO lower rate of return set for projections on illustrations and demonstrative of what was thought likely achievable at the time.

Mr W's representative argued that the costs within the fund and the impact of inflation represented an unnecessary risk. But as explained above, LAUTRO had specified that in providing figures for comparison, firms had to provide the potential benefits from the personal pension in a form it felt comparable to the benefits from SERPS. And the charges were included within the projections and in Prudential's actuarial calculations with regards to who would likely benefit from contracting-out with its personal pension.

I've checked the criteria drawn up at the time by 34 other professional actuarial teams from other pension providers that we have data for (the criteria was not the same across these providers). And many of the pivotal ages for men at the time were higher than Prudential's and minimum salaries lower.

Mr W's representative believes this evidence just shows common practice within the industry and believes this to have been bad practice. But this is, in my view, constructed with hindsight. At the time, in the context of the economic climate and the rules of the day, I think Prudential met what I would consider good practice at the time. And it followed the rules and guidance set out by LAUTRO in designing its criteria.

Furthermore, in response to a Parliamentary question following the decision to allow individuals to contract-out of SERPS, the GAD produced calculations for men and women contracting out in 1988 to illustrate what it felt the pivotal age was. For men aged 40 in 1988, GAD said that the pivotal age was likely to be 45 based on the LAUTRO lower rate of return and 48 on the higher.

So I think Prudential's criteria was fair and reasonable at the time and met the standards required of it.

Did Mr W meet Prudential's criteria for those that would likely benefit from contracting-out of SERPS?

Mr W was aged 40 and earning £11,000 per annum when the advice to contract-out of SERPS was given. Prudential's criteria at the time for men was that they would benefit from contracting-out of SERPS if they were aged below 45 and had earnings over £5,000 per annum.

So Mr W was below the pivotal age at the time of advice. And also earned in excess of double the minimum amount regarded by Prudential's actuaries as enough to accumulate funds in the plan after covering the charges. Not only did Mr W meet Prudential's criteria but he also met all of the other 34 provider's criteria that we have data for from that period.

So when contracting-out was designed by the Government and rolled-out by the regulator, Mr W fell into the group who it was considered would likely benefit from this option. And therefore when Prudential advised Mr W to contract-out, I think it was reasonable to believe that he would be better off.

#### Was the advice suitable

Mr W's representative has made a number of points relating to the sale and why he feels it fell short of the standards of the time. And therefore the advice was not compliant with the rules at the time and should be upheld. In particular, the risk that Mr W was exposed to, which Mr W's representative says he wasn't informed of at the time.

The sale took place a long time ago and so the information from the time is fairly limited as you'd expect from an event 30+ years in the past. That there's not a full record now to show all the specific requirements were met is neither sinister nor surprising.

There is no record of what level of risk Mr W was prepared to take from the time. There wasn't the same specific requirements as there are today to complete a documented risk analysis. Prudential say that the adviser would've discussed the risks and carried out a risk assessment. But if it was documented, it's not part of the documentation available from the time now. At the time there wasn't a requirement to complete a fact-find document either, however Prudential did complete one. But there is limited information that can be gathered from it.

Looking at the information we do have, I can't see there is anything to show that Prudential did do something wrong in the way it conducted its sale with Mr W.

Mr W was given a personal quotation which was designed in-line with what LAUTRO required. This could be used to compare the likely benefits from the personal pension with SERPS. It explained that the two pension figures estimated at retirement were based on growth of: 2.5% per annum in excess of the national average earnings yearly increase and the other 0.5% in excess of the same measure. The pension at retirement included 3% escalation and a 50% spouses' pension as required by LAUTRO.

In the notes alongside the illustration it explained that:

*'in order to provide an indication of the possible benefits that might be paid under this policy and a comparison between the possible benefit under your policy and the SERPS benefit you will be giving up, LAUTRO... has made rules which lay down two bases on which future benefits must be illustrated. The annuities illustrated are in a form which can be compared with the SERPS benefit, otherwise accruing in the current tax year, which you will be giving up by contracting out... The figures quoted in these illustrations comply with the rates of return and others factors as set out in the LAUTRO bases.'*

Mr W was made aware that he was giving up the SERPS benefit in favour of an investment linked to returns. And he was provided with the LAUTRO specified figures to see whether he would likely be better off.

The illustration gave Mr W the ability to compare the estimated returns (and that these were reliant on investment growth) he would receive compared with those in SERPS. So a fair comparison, which was compliant with the LAUTRO rules, could be made. At the time there wasn't a requirement (until 1993) to show the SERPS benefit given up on the illustration. But the adviser was required to have

regard to the SERPS benefit the investor would be losing, when giving advice. The fact that the SERPS benefit in Mr W's comparison would've been lower than the illustrated contracted-out benefit, suggests it's highly likely the Prudential adviser would've had the figure available for comparison. It was in his interests to do so, to illustrate the potential benefits of contracting-out to Mr W and ultimately sell him the pension.

So I don't agree that Mr W wasn't made aware of the risk at the time. He was told that he would be giving up the SERPS benefit for a pension that was based on investment growth. And he was given figures that he could use to make a comparison between the two, that met LAUTRO's requirements.

As the investigator explained, at the time there was no specific requirement for the fees and charges to be highlighted during the sales process, although the consumer had to be given details of them in the documentation. Prudential says it would have given Mr W documentation and it has sent us an example of the documentation relevant to this product at the time. I'm satisfied that Mr W would have received this and that this document outlined the relevant fees and charges applicable with the legislation at the time.

So, I don't think Prudential did anything wrong here in the information it presented, it met the standards of the time and the rules set out by LAUTRO. And I don't agree with Mr W's representative that a fair comparison wasn't made and that the risks weren't set out to Mr W.

I think the recommendation to contract-out looks broadly suitable for someone of Mr W's circumstances at the time.

In saying the advice looked suitable for Mr W I've taken into account:

- that the risk involved at the time was low. Mr W contracted-out of SERPS in 1988 which historically was the most favourable time, rebates were at their highest and had a 2% incentive added. And market returns were strong.
- Mr W met the actuarial criteria drawn up by Prudential (which as I've explained above was reflective of what was widely considered reasonable at the time) for someone in 1988 that would likely benefit from contracting-out of SERPS.
- I think it's unlikely someone of Mr W's age and circumstances, would have thought that the risk involved here was intolerable. It was fair to assume he would likely be better off contracting out in that year. And contracting-out wasn't a lifelong decision he'd be held too. He would always have the option to contract back in, if conditions changed.
- Whilst there's not enough information from the time to say whether Mr W would've had a cautious, balanced or high-risk appetite, there's nothing to suggest that Mr W was completely risk adverse either. As an aside it appears from the fact-find that Mr W had an endowment policy in relation to his home, which does suggest he was prepared to accept some risk.

Mr W's representative has placed a lot of emphasis on what he believes to be breaches in the advice process. But as I've said whilst I've considered this possibility, I can't see that there has been a breach. And if there has been a breach of the standards, based on the evidence I've seen, I don't think it's likely this would have been material. It should be understood that a breach of process or standards on its own, doesn't mean a complaint should be upheld. For example if a customer would've accepted the advice anyway if they been given all the relevant information, then a breach in the information given hasn't changed matters.

To directly answer a point Mr W's representative made, that the adviser should've told Mr W at the time, 'this could cost you thousands of pounds in retirement'. I disagree that this type of warning was required of Prudential at the time. The financial conditions and Mr W's circumstances did not point to this being the case. And I see no compelling reason why someone in Mr W's position would not have gone ahead with the advice understanding the nature of the risk.

We know that contracting-out didn't benefit all. And some people have ended up worse off in retirement for various reasons. In later years the rebate method changed, and annuity rates and

*investment performance decreased. But to take this into account in this sale, would be to apply hindsight and contracting-out did benefit many. It is the conditions at the time of advice and sale that have to be considered here.*

#### My provisional conclusions

*Prudential used fair controls based on the financial environment at the time and the rules set out by LAUTRO, to establish whether it was likely Mr W would be better off contracting-out. It's pivotal age and earnings limits were in-line with other providers at the time and drawn up based on regulator guidance. And it applied these in accordance to Mr W circumstances at the time. Mr W met the criteria of someone who would likely benefit from contracting-out of SERPS. And given all the correct information, I think he would've accepted the recommendation. So, I cannot now fairly say that the advice Mr W was given to contract-out was unsuitable.'*

Following my provisional decision, Mr W's representative said in response:

- Mr W wasn't warned that he was giving up guaranteed benefits in favour of something with many variables.
- And had he been warned of these risks he wouldn't have chosen to contract-out of SERPS.
- Unless there is evidence that Mr W had a high attitude to risk and capacity for loss, on the balance of probabilities he wouldn't have contracted out of SERPS.
- Just because something was common practice at the time doesn't mean it was good practice. An example of this is asbestos.
- The SIB Review didn't require hindsight to know that giving up guaranteed inflation proof benefits was likely to be bad advice, nor does it need hindsight to see that contracting out in the 1990's was bad advice.

Prudential said in response to Mr W's representative's points:

- Its records show the initial meeting took place in 1987 and this pre-dated the requirement for a detailed fact-find. However, Prudential revisited the advice with Mr W in July 1988 and updated its documentation then.
- It's not possible to verify what was discussed with Mr W, nor is it considered reasonable for discussions from over 33 years ago to be recalled with any certainty. We have no reason to doubt that in 1987, the potential benefits of SERPS weren't fully explained, and that Mr W was provided with clear information to be able to make an informed decision.
- We don't agree that with the benefit of hindsight, it is now either appropriate or fair to apply the standards that are in place today to a sale in 1987. Neither Mr W or his representative have provided any evidence to show that he wasn't made aware of the risks. All they have provided is assumptions
- We don't believe it can be answered with any certainty, after 33 years having elapsed, what Mr W's appetite for risk was. And it's highly likely to be different to his attitude to risk today.
- We have no comments to make on the analogies made by Mr W's representative, nor do we consider they are relevant.

#### **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.

The relevant arguments Mr W's representative made in response to my provisional decision are largely not new and have already been covered in that decision. I won't go over these points again; but I've set my provisional findings out in full above, which form part of this decision.

Mr W's representative hasn't provided evidence or arguments specific to Mr W's case to support his assertions about contracting-out. Mr W's representative's arguments essentially boil down to contracting-out of SERPS was unsuitable across the board. I don't agree and I've explained in some detail in my provisional decision with reference to the available evidence – why I don't think the advice was unsuitable for Mr W's circumstances at the time.

Mr W's representative says that the result of this advice is losses that stretch into the thousands. No evidence of this has been provided nor an approximate figure. So I don't know whether a loss has actually occurred. But a loss occurring doesn't mean the advice was unsuitable. And looking at the evidence we do have, there appears to be reasons other than just potential poor performance as to why Mr W could've received less from his contracted-out policy than he would've received from SERPS.

I'm presuming Mr W might be comparing the benefits he got from the personal pension against the deducted figure shown on his state pension documentation for the period in question. But Mr W took his benefits from the personal pension in 2007. This is some time earlier than he would've been able to access his SERPS benefits. So, a straight comparison of the figures wouldn't give a true picture. In taking his benefits early, his annuity would be reduced as it spans additional years. Also Mr W took 25% of the fund as a tax-free cash sum. This would've reduced the pension amount further in comparison to what he would've received from SERPS.

I also note that Mr W remained contracted out until 2000. Which would've taken him beyond the pivotal ages set by Prudential where it considered it might not be beneficial to remain contracted-out. Prudential says it sent annual reviews from 1987 to 2003 to all its contracted-out clients and within these reviews it quoted the pivotal ages at which a customer should consider contracting-back in.

It's also worth noting that being able to take your benefits early and receive a tax-free cash sum (neither of which were available within SERPS) was a benefit of contracting-out and clearly something that Mr W came to value.

But ultimately what happened after the advice isn't important here. It's the conditions and circumstances in 1987 when Mr W was advised to contract-out that I've considered.

Mr W's representative says that Mr W wasn't warned about the benefits he was giving up within SERPS. Nor was he sufficiently informed about the variables that would affect his personal pension such as annuity rates, inflation and market performance. This event occurred over 30 years ago and so it is not possible to know all of what Mr W was told. But the documentation we do have supports that Prudential did give Mr W the relevant information. For example, the illustration that I referred to and quoted in my provisional decision that was prepared for Mr W, also went on to explain the variables that could affect the personal pension in comparison with SERPS. It said:

*“The two amounts do not represent the upper and lower limits of the possible amount of the benefit. The actual comparison with 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.”*

As I set out in my provisional decision, the evidence suggests Prudential's sales process and the information given to Mr W met the standards and requirements of the time. And I think it was a fair assumption then that Mr W could be better off contracting-out. Mr W's representative arguments now that contracting-out of SERPS was clearly bad advice, is in my view constructed with hindsight.

Whilst the benefits within SERPS had certain guarantees (as long as the government supported the arrangement that is), the amount of pension received and the performance mechanisms within SERPS were subject to change. Mr W had at least 25 years until his retirement age, a lot could (and would) change within SERPS in that time. When Mr W contracted-out of SERPS, growth was linked to the national average earnings index. So performance wasn't guaranteed then either.

The opposing option, to contract-out, was at a time when rebates were set advantageously (for someone of Mr W's circumstances) and likely rates of return above SERPS'. Meaning in the forthcoming year(s) contracting-out had a good chance of outperforming the benefits that would otherwise have been built up within SERPS. Whilst there were many variables that could affect personal pension outcomes, Mr W was many years from retirement. And so he could afford to take some risk for potential higher returns. And contracting-out wasn't a permanent decision, Mr W could've contracted back in the future. So I don't agree with Mr W's representative that this was only suitable for someone with a high-attitude to risk.

Mr W's representative compares the contracting-out of SERPS to the industry wide mis-selling which brought about the Securities and Investments Board (SIB) Review in the mid 90's. I don't agree the situation is similar. The SIB Review was carried out because the regulator was concerned about wide-spread mis-selling with consumers losing out on the advantages of being in an Occupational Pension Scheme (OPS). No such wide-spread industry review was carried out regarding contracting-out of SERPS (when no OPS was available). Incidentally the OPS' – which in the main the SIB Review found customers' shouldn't have given up – were typically contracted-out of SERPS.

SIB did produce a report in 1996 looking at the results of contracting-out of SERPS for personal pensions established between 1987/1988 to 1991/1992. It estimated then from its review of 5.6m live (still contracted-out) cases that only 10,000 had a likely loss.

Later the Financial Services Authority (FSA) also commissioned a report by the Oxford Actuaries and Consultants (OAC) on SERPS in 2005. The report found due to changing conditions that more people had lost out or were on course to lose out through contracting-out than in 1996. Following this the FSA (*'Contracting out of the additional state pension 2005'*) set out its thoughts on the OAC's findings and the future of SERPS. Within this it said something that I think is particularly relevant here.

*"it is important not to equate potential underperformance with mis-selling. Performance risk is an inherent feature of personal pensions, but remaining in the State Second Pension is also subject to potential uncertainty about future government policy. So both options available to consumers are subject to uncertain outcomes arising from unpredictable events. The fact that a consumer may receive less pension at retirement, compared with their position had they taken a different choice many years previously, is not evidence of mis-selling and does not therefore constitute valid grounds for a complaint. **When considering whether mis-selling may have occurred, the rules and standards to be enforced will continue to be those in place at the time of sale and not some retrospective reconstruction (my emphasis).**"*

As I set out in my provisional decision, the evidence we do have from the sale supports that Prudential did meet the rules and standards of the time. And Mr W was told he was giving up the benefits within SERPS for something that was based on a number of variables, so he knew there was some level of risk involved. Contracting-out provided a reasonable prospect for Mr W to improve on the benefits that he would otherwise get from SERPS. There was some risk involved. But in my view this wouldn't have appeared to present any significant risk at the time. And I don't think Mr W with knowledge of all the relevant information, would've done anything differently.

In conclusion, I don't think the advice Prudential gave Mr W to contract-out of SERPS was unsuitable and I won't be upholding this complaint.

### **My final decision**

I do not uphold Mr W's complaint and I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 14 July 2021.

Simon Hollingshead  
**Ombudsman**