DRN-4349293

The complaint

Mrs P complains that The Prudential Assurance Company Limited (Prudential) mis-sold her a personal pension plan in 1989. She also complains that the plan had extortionate fees, attracted no inflation-linked increases, and failed to offer her the retirement option she wanted.

What happened

There is very little documentary evidence from the time of the advice. But I've been provided with two documents from February 1989.

The first is a report of a financial review. This recorded that Mrs P:

- Was employed, earning £5,000 a year
- And that her employer didn't have a pension scheme
- It also noted that Mrs P had no other pension arrangements.

The second document provided was a copy of the application for a Department of Social Security rebate. This recorded that Mrs P:

- Was 21 at the time
- And that her "*Estimated gross earnings from employment to which DSS payments relate…*" were £5,000. And that she was eligible for the DSS incentive payment of 2%.

Prudential said it has issued annual pension statements to Mrs P each February.

Mrs P was unhappy with how her pension plan had been sold. So she wrote to Prudential on 16 December 2022. She felt the annual statement from February 2022 had been confusing. And that her pension should be worth more than the statement had noted. She wanted to be compensated in respect of the following complaint points:

1. The pension plan had been mis-sold to her. She'd been on a low salary in 1989. And this had been very unlikely to change. She said as she'd been very young at the time of the advice, she didn't feel she'd been given fair advice or a reasonable explanation of what the plan would do for her before being signed up to it. And that if Prudential had done the correct due diligence, it would've realised that the pension plan wasn't appropriate for her. And she should instead have been advised to stay in the government pension.

2. The fees Prudential had charged were extortionate. She felt that her 2022 statement showed that Prudential had taken 84% of the annual growth in her fund in charges, leaving her with only 16% of that growth. And that as such charges had been taken since the start of the plan, Prudential must've taken the vast majority of any

increases.

3. She felt there must be an annual inflationary increase due shortly. And that this would need to be added to her account

Mrs P also said she understood she'd be able to draw the funds in her pension plan once she reached age 55, which would happen the following year. So she included an instruction to Prudential for it to arrange for her policy to be closed once she'd reached 55. She said she wanted it to pay her the full value of her plan, not an annuity.

Prudential issued its final response to Mrs P's complaint on 11 January 2023. It didn't think it'd done anything wrong. It felt that it'd made Mrs P aware of the pension plan. And that she'd met the minimum criteria at the time of the sale. Therefore it felt that the pension plan had been suitable for her. And it hadn't been mis-sold.

Prudential also said that the fees it'd charged had been noted on each of Mrs P's annual pension statements. And that the details of what the charges were was fully explained on those statements. And explained that although state benefits did increase in line with Consumer Prices Inflation (CPI), Mrs P's pension plan didn't.

Prudential acknowledged Mrs P's instruction to close her plan once she'd reached age 55. It said that her only option when the plan had been arranged was to take the benefits from her plan at state retirement age in the form of an annuity. But that due to changes in pension legislation, she could now take her benefits from age 55. It said it would arrange for Mrs P to receive information about the options she had for taking her benefits.

On 11 January 2023, Prudential wrote to Mrs P with a summary of her pension plan.

Prudential also sent Mrs P a retirement pack on 11 January 2023. It explained Mrs P's options for accessing her pension. And how she could find help. It also sent Mrs P a "Key risks" document.

Prudential also sent Mrs P a further letter on 14 January 2023 about her pension plan options.

Mrs P called Prudential on 23 January 2023 as she wanted to access her pension. Prudential told her that she'd have to wait until 30 days before her 55th birthday to do this.

Mrs P was unhappy with Prudential's final response letter. She wrote to it again on 8 February 2023 to detail her outstanding concerns. She also said that she'd contacted Prudential about taking her pension on 23 January 2023. But that she'd been put on hold for 70 minutes. And then told she'd have to wait until closer to her 55th birthday before she could do anything.

Prudential replied to Mrs P on 21 February 2023. It still felt that her plan hadn't been mis-sold and that the fees it'd charged had been correct and not excessive. But it felt that Mrs P shouldn't have had such difficulties in contacting it. It said it had arranged for £50 to be sent to Mrs P to apologise for the trouble and upset caused by the poor service she'd received when calling it.

Prudential acknowledged that Mrs P didn't feel she'd received an explanation about why it would've been in her best interests to take out the pension plan. And that she felt she'd not been given the full facts. It also acknowledged that Mrs P couldn't remember signing any of the sale documentation. But it said it'd already shared with her a copy of the application form and fact-find, both of which she'd signed. It also said that when Mrs P had signed the application, she'd confirmed that she'd received a copy of the Personal Pension product guide which confirmed how the policy worked, where the funds would be invested, and the charges. Prudential said it felt that the documentation had confirmed that the appropriate information had been given to Mrs P at the time of the sale.

Prudential also said that the fees for the pension plan had been fully explained at the outset. And that Mrs P had agreed to them. So it couldn't agree that the fees were incorrect or inappropriate.

Mrs P called Prudential on 21 March 2023 to tell it she wanted to take the benefits from her pension plan as a cash lump sum. And on 22 March 2023, Prudential wrote to her to confirm that she'd told it she wanted to take her fund value as cash. And that she understood that the payment Prudential would make to her would have a deduction for income tax.

Later in March 2023, Prudential wrote to Mrs P to tell her that her pension plan had been closed. And that it would make a cash lump sum payment to her bank account. The letter gave a breakdown of how the amount being paid had been calculated.

Unhappy with Prudential's response, Mrs P referred her complaint to this service on 26 May 2023. She said she definitely wouldn't have taken out the pension plan if the details and charges had been explained to her. She wanted Prudential to recognise that it'd mis-sold the pension plan. And to compensate her for the money she'd lost, plus interest. She also wanted compensation for the stress and anxiety Prudential had caused her.

Mrs P also told our investigator that she now understood that the charges on her pension plan were based on the fund. But said she wasn't given this information by Prudential at the time of the sale. She felt Prudential had taken advantage of her. She also felt that this had led to Prudential taking fees to which it shouldn't have been entitled.

As the event being complained about had occurred more than six years ago, our investigator asked Prudential if it would give us its consent to consider the complaint. Prudential gave us its consent.

Our investigator didn't think that the complaint should be upheld. Although he acknowledged that he couldn't be certain that Prudential had fully explained the plan at the time, he felt that at the time of the sale, there was a strong prospect of better returns for the future through money saved rather than not saving and remaining in SERPS. And that if Prudential had explained the plan more fully, it would've appeared more attractive to Mrs P than staying in SERPS.

Mrs P didn't agree with our investigator. She said she didn't receive enough information to make an informed decision at the time of the sale. And that she hadn't given permission for the pension plan. So Prudential had taken fees without her authority.

As agreement couldn't be reached, the complaint has come 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's view for broadly the same reasons. I'll explain why.

I'll first give some background to the State Earnings Related Pension Scheme (SERPS).

What is SERPS?

SERPS was a top-up to the basic state pension payable at the consumer's state pension age. It was also sometimes called the additional state pension. So in addition to their basic state pension, consumers would also receive a SERPS pension at retirement.

You had to be employed to qualify for SERPS as benefits were built up by National Insurance contributions (NICs) made by consumers and their employers. The amount of the benefits depended on the consumer's earnings each tax year.

Consumers could choose to opt out of SERPS, also known as contracting-out. So rather than building up an additional state pension, they could build up benefits by redirecting some of the NICs to a personal pension plan - as Mrs P did - or by joining an occupational pension scheme that was contracted-out.

For the avoidance of doubt, Mrs P's basic state pension is unaffected by the decision to opt out of SERPS using the Prudential personal pension plan.

I next considered the sale in 1989.

The sale of the policy

The sale took place in 1989. At the time, Prudential was a member of the Life Assurance and Unit Trust Regulatory Organisation (LAUTRO). LAUTRO required members to exercise due skill, care and diligence and deal with investors fairly. And to consider the customer's financial position and all other relevant circumstances when giving advice. But there was no requirement to complete a fact-find or issue a recommendation later. So, it's not surprising that there's very little documentation relating to the advice.

Mrs P said Prudential didn't give her enough information for her to make an informed choice at the time of the sale. And that she was unlikely to earn much more in future than she was earning at that time.

But overall, taking into account what I know about Mrs P's circumstances at the time, I haven't seen anything that makes me think the advice Mrs P was given about contracting out of SERPS was unsuitable for her. I explain why.

When the government decided to allow individuals to contract-out of SERPS, it offered incentives to encourage them to do so. No guidance was provided to firms about who should be advised to remain in SERPS or who was likely to benefit from contracting out. So pension provider's actuaries carried out comparisons of the projected benefits from SERPS with those from alternative personal pension arrangements. The calculations were based on what were considered to be relatively conservative assumptions of future investment returns at the time. Although, as our investigator explained, those assumptions look high compared to today's investment returns.

People who contracted out of SERPS received rebates into personal pension plans from the government. The rebates were set in such a way that it was generally more attractive for younger people to contract-out than those who were older. The ages where advice changed about whether to contract-out or not were called "pivotal ages". In 1989, Prudential's pivotal age for women was 35. So, it considered that females under 35 were likely to be better off by contracting out. This was because they had a sufficiently long investment horizon to achieve growth on the rebates paid to them by the government. Mrs P was 21 at the time of the advice, so she was significantly below the pivotal age for women, meaning there was substantial time and opportunity for investment growth before she would likely retire.

Another factor used to determine whether someone was likely to be better off contracting-out of SERPS was their amount of earnings. The application form confirmed that Mrs P's income was £5,000 per year. At the time, because the government was offering a 2% incentive to contract out, some providers didn't set a minimum level of earnings. However, Prudential had a minimum of £5,000. For context, when the incentive was removed in 1993/1994, the minimum level of earnings was set at £5,000 per year. So I can't reasonably say that Prudential's 1989 minimum was unreasonable.

Given Mrs P's earnings in 1989 were £5,000 a year, I think her earnings were sufficiently high to ensure that rebates forwarded by the government would cover the plan charges.

Prudential also said that a further criterion was that a customer would need to have been able to opt out for at least five years. And that its records showed that it did receive payments for six years in a row, as well as additional payments after that. So Mrs P met the criteria of being able to contract out for at least five years.

I've also considered the fact that there was some investment risk attached to Mrs P's pension plan and she didn't appear to have previous investment experience. Contracting out of SERPS meant that Mrs P would be giving up her entitlement to SERPS in the hope that the contributions would grow in excess of the pension she could've expected to receive from the state. There is no record of Mrs P's attitude to risk, but the contributions were invested into the with-profits fund, which was considered to be a cautious fund at the time. I haven't seen anything to suggest Mrs P was unable to take any risk with these funds. So, I don't think the arrangement was too risky for her, given that she had almost 40 years before she could start to think about taking the benefits from her plan and so she had time to recoup any losses.

Overall, I'm satisfied that Mrs P met the criteria at the time and I think there was a reasonable prospect that she could've been better off by contracting out of SERPS. For this reason, I don't think the advice from Prudential here was unsuitable.

I acknowledge that Mrs P doesn't consider that Prudential fully explained the pension plan at the time of the sale. And that Mrs P considers that if Prudential had done the correct due diligence, it would've advised her to stay in SERPS.

I have no way of knowing what information Prudential shared with Mrs P, other than the limited documentation it has provided. But I note that the declaration it appears Mrs P signed stated: "*I have received a copy of the Personal Pension Product Guide*". And Prudential said this confirmed how the policy worked, where the funds would be invested, and the charges. I consider it most likely that this guide was provided and that it would've covered the areas Prudential said it did.

In any event, I agree with our investigator that regardless of whether Prudential did or didn't provide a full explanation of the pension plan at that time, I consider that taking out the plan was suitable for Mrs P at the time of the sale.

I say this because Mrs P decided to take out the plan even though she now considers she didn't have enough information to take such an action. She signed documents at the time of the sale which agreed to it. And I'm satisfied that if she had received all the information she felt she needed at the time of the sale, she would still have taken out the pension plan, because it would've appeared to be in her best interests to do so.

I next considered whether Prudential had made the charging structure clear. And if it had charged Mrs P correctly over the years she's had her pension plan.

Charges

Based on the 2022 annual statement, Mrs P considered that Prudential's charges were extortionate. And she wouldn't have taken out the pension plan if the charges had been explained to her. She also felt that she hadn't given Prudential permission for the pension plan. So it had taken fees without her authority.

I can see that Mrs P now understands that the charges are based on the value of her pension fund. But I want to explain in a bit more detail why I consider Prudential has fairly taken the fees it's charged.

As I noted earlier, Mrs P signed a declaration at the time of the sale which stated: "*I have received a copy of the Personal Pension Product Guide*". I'm satisfied that this shows that Mrs P did agree to the pension plan, as she signed the declaration agreeing to start it. I'm also satisfied that she was given a guide which would've explained the charging structure of the product. However, even if that document didn't fully explain the charges, I can see that the annual statements do fully explain the charging structure. From what I've seen, the charges are in line with other products of the same type.

On this basis, I'm satisfied that Mrs P did give Prudential permission for the pension plan. And in doing so, she gave it her authority to take the fees connected to the plan. I've seen no evidence that Prudential has charged Mrs P the wrong amount. Nor have I seen any evidence that the fees are extortionate, or out of line with other providers' fees for similar products. So I can't fairly uphold this part of the complaint.

I finally considered whether there should've been an annual inflationary increase on the pension plan.

Increases to the pension plan

Mrs P felt that her plan would receive annual inflationary increases.

I can see that Mrs P felt that the pension plan she'd started in 1989 should increase in a similar way to the SERPS benefit she might've otherwise received if she hadn't set up the plan. But that isn't the case.

The pension plan grows or reduces in line with the growth of the with-profits plan it is invested in, net of all charges. Therefore, the plan doesn't offer annual inflationary increases.

As such, I can't reasonably say that Prudential has done anything wrong by not applying any to Mrs P's plan.

I acknowledge that Mrs P considers that Prudential has caused her distress and inconvenience. Prudential has agreed that she shouldn't have had the difficulties she faced when contacting it in December 2022 and January 2023. And has paid her £50 for the trouble and upset this caused. I can't reasonably ask it to do more than this, as I've not found any evidence that it did anything else wrong.

I do recognise Mrs P's strength of feeling about her complaint. And I appreciate that she'll be disappointed with my decision to not uphold her complaint about the plan being mis-sold. But I don't think the plan was unsuitable for her at the time of advice. So I'm not asking Prudential to take any further action.

My final decision

For the reasons explained, 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 24 October 2023.

Jo Occleshaw
Ombudsman