DRN-4509208

Financial Ombudsman Service

The complaint

Mr R complains that The Prudential Assurance Company Limited has refused to allow him to change the selected retirement date on his pension despite having told him he could do this. He also complains that there are a series of selected retirement dates for his pension which he did not consent to.

What happened

Mr R has a personal pension plan with Prudential. He took out the pension in 1989. He says he requested that his retirement date should be the same as his state pension age but Prudential persuaded him to instead select an earlier retirement age. He says the adviser told him he could change his Selected Retirement Date (SRD) at any time.

During subsequent years, Mr R increased the contributions he was making to his pension as his personal circumstances changed.

Mr R contacted Prudential in April 2023. He said he planned to continue working until around 2029. He asked it to change the SRD on his policy to this new date. Prudential responded to say that there were multiple SRDs on his pension – September 2024, May 2025, September 2025, September 2029, August 2030 and October 2030. It said that although the plan term could be extended, Mr R would need to contact it three months before each SRD to do that.

Mr R asked for an explanation of why there were so many SRDs – given that he only had one pension plan. He said he just wanted to have a single retirement date.

Prudential responded to say that the SRD of September 2029 was for former protected rights benefits. It said this date had to be the same as the state pension age. The other SRDs were for non-protected rights benefits. The SRDs for the non-protected rights benefits were set at the start of his plan and each time he made on-top contributions. There was only one overall plan. Prudential said that although there were several SRDs for his non-protected rights benefits, Mr R could take the benefits from age 55 to age 75. He could also take all his non-protected rights benefits on the same date if he wanted to.

Mr R was not satisfied with this response. He complained to Prudential.

Prudential investigated his complaint. It accepted that it had been slow to respond to his enquiry. It sent him a payment of £200 by way of compensation for the distress and inconvenience he'd experienced.

Mr R said Prudential had not dealt with the substance of his complaint which was that he'd been told in 1989 he could change his SRD at any time. Mr R also said he'd been told to select an earlier retirement date in case of ill health. Mr R wanted Prudential to change the SRDs for his pension to the same date. Prudential reviewed his complaint again. By way of summary it said:

- Its records showed that Mr R had selected each of the retirement dates and he'd completed application forms at the relevant times which supported this.

- He'd contracted out of SERPS (State Earnings-Related Pension Scheme) and that was why he had protected rights benefits. The retirement date for those benefits had to be the state pension age.
- There was no evidence to support what Mr R had said about being advised he could change his SRD at any time.
- The Member Booklet and the policy schedule which he would have received at the outset explained what would happen when he reached the SRD. These documents made clear he could not change his SRD.
- He could take all his benefits at one time, if he wanted to, between age 55 and age 75. There would be no early retirement charge. A Market Value Reduction (MVR) might apply because he was invested in the With Profits Fund.
- It would pay him a further £150 for any inconvenience he'd experienced as a result of Prudential's delay in responding to his complaint.

Mr R did not accept this. He referred his complaint to our service. He said he was also concerned that the make-up of his investments may have been changed to more bonds and cash as each SRD approached. He reiterated that he wanted Prudential to amend the SRDs for his plan to the same date – 2029.

Our investigator looked into his complaint. He said there was no definitive evidence that Prudential had told Mr R in 1989 he could change his SRD at any time. He referred to the information in the Member Booklet which Mr R would've been given at that time. Our investigator also referred to the application forms Mr R had signed each time he topped up his pension which included his chosen SRDs. He didn't think, in these circumstances, it was unreasonable for Prudential not to change all of the SRDs in the way Mr R had requested.

Our investigator considered the payment of £350 (in total) which Prudential had made to Mr R for distress and inconvenience. He thought this was fair and reasonable.

Mr R disagreed. He said he'd never contracted out of SERPS. He said the original meeting in 1989 was not planned and there'd been no discussion with him. He'd just been asked to sign the paperwork. He reiterated he wanted Prudential to amend his pension so that there was just one SRD.

Our investigator considered what Mr R said but he did not change his view. So, the complaint has been passed to me to decide.

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.

At the outset I'd just point out that after referring his complaint to our Service, Mr R has raised new issues about whether he should have been contracted out of SERPS and about the time taken by Prudential to respond to a data subject access request. If Mr R remains dissatisfied with Prudential's response to these issues, he will need to raise them separately. In this decision I'm only dealing with the complaint he's made which is about Prudential's refusal to change his pension arrangements so that there is just one SRD. He says this is contrary to what it told him in 1989.

By way of summary, Mr R says:

- Prudential told him, in 1989 when he started his pension, he could change the SRD at any time. He doesn't remember getting any documentation at that time. He has a policy document from 1993;

- there are a number of SRDs for his pension which he did not consent to. Mr R thinks Prudential may have effected new policies each time he made additional contributions to increase its sales commission;
- Prudential refuses to change the SRDs to the date he wants. He's concerned about the administrative burden this places on him to contact Prudential prior to each SRD to change it to a later date; and
- he's worried that as each SRD approaches the composition of his investments changes to assets which, he says, may not provide good returns.

I'll consider each of the points Mr R has raised.

<u>Was Mr R advised in 1989 he could change his SRD at any time</u>*?*

Although Mr R's complaint is about an event which happened more than six years ago, Prudential has given our Service its consent to investigate this complaint.

Because of the passage of time it's difficult to be certain what Prudential's adviser said to Mr R in 1989. He's told us that the meeting wasn't planned and there wasn't any discussion with him – he was simply asked to sign the paperwork. But he does recall a discussion about the SRD. He says the adviser told him to select a term of 36 years, in case of ill health. And, he says the adviser said he could change the SRD at any time.

Prudential has provided copies of documentation relating to what happened in 1989. I've commented below on what has been provided:

- the "Personal Financial Review" (PFR)
  This document is not dated, but from the information on the form I can see it relates to the time when the pension arrangements were first made. Mr R signed the document. The information on the form is scant. It includes some personal and financial details. The section headed "when would the client like to retire" is left blank.
- "Application for Membership and Proposal for Benefits"
  This form is dated 14 March 1989 and signed by Mr R on that same date. Section 4 of the form deals with the Selected Term which was inserted as 36 years. Mr R doesn't deny that this was the date agreed in 1989. His complaint is that he was told to select this date "in case of ill health" and he could change the date at any time.
- Illustration
  This document is dated 15 March 1989. It illustrated what the on-top pension (the non-protected rights) might be worth at the end of the selected term of 36 years. There was also an illustration for the protected rights policy setting out what it might be worth at state pension age.
- Representative report
  This document is signed and dated by Prudential's representative on 15 March 1989. The representative has ticked to confirm that he wishes to deliver the membership documents personally. Mr R has told us that the Prudential representative did call at his home from time to time, to collect premiums from another family member. And, although Mr R doesn't recall getting a key facts document at this time, I think, on balance, it's likely that the membership documents (which included the Member booklet) were delivered to his home, in 1989, during one of the visits by Prudential's representative. Mr R say he does have a Member Booklet dated 1993. So, there's no dispute that, at least, after that date he would've been able to read the Member Booklet.
- The Member Booklet
  This booklet contains a section headed "Selecting a retirement date." It states that the member had to select a retirement date but the member could normally retire

before or after the chosen date – subject to Inland Revenue regulations. There is also a section in the booklet about what would happen (as regards any non-protected rights benefits) in the event that the member wanted to retire earlier or later than planned. The protected rights benefits could not be taken before state pension age.

I've set these sections of the Member Booklet* out below.

Early retirement
…if you choose to retire earlier than planned, then the value of your units, together with any Terminal Bonus, will be made available to purchase pension benefits from the Prudential, subject to the recovery of any outstanding initial expenses and, if necessary, a Market Value Adjustment…

Late retirement
You may choose to retire later than you originally planned. …

When you reach your selected retirement date (or state pension age in the case of protected rights benefits), and if your contributions have been invested in the WPCA Fund, you will have the option of switching the value of your WPCA Fund (including any Terminal Bonus) to the Deposit Fund and continuing to pay premiums, until such time as you choose to take your benefits. You may decide not to exercise this option, in which case your fund would remain invested in the WPCA Fund, with Terminal Bonus added to the fund for the period of the initial term. Any further Terminal Bonus will be added when you subsequently take your benefits.

However, if you remain in the WPCA Fund, when you come to retire a Market Value Adjustment may apply (see the section headed "Market Value Adjustment"). For the purpose of determining this Market Value Adjustment, your selected retirement date would be increased by five years, or to age 75 if you are over 70. This would be repeated at the end of each five year period to a maximum of age 75. You may, of course, choose to retire at any time in between, when the options at the selected retirement date for on-top contributions (or at state pension age for protected rights benefits) will continue to be available.

(*Note: WPCA Fund refers to Prudential's With Profits Cash Accumulation Fund*)

** The wording set out above is the same in both the 1989 Member Booklet and the Member Booklet which Mr R has provided to us which he says he received in 1993.*

The extract from the Member Booklet does state that Mr R could choose to retire earlier or later than the SRD – so to that extent, it was the case that he was able to change the date that he chose to retire and take his benefits.

However, being able to change the date he chose to retire did not mean that he could change the SRD. Full details about the process that would apply (and the potential implications) should he decide to retire earlier or later than the SRD, were set out in the Member Booklet. The Member Booklet did not say that Mr R could change the SRD. And, as I've said above, I'm persuaded on balance it's likely he was given a copy of this booklet in 1989. Mr R has accepted that by 1993 he held a copy of the Member Booklet. The wording in the 1993 Booklet regarding early and late retirement had not changed. So, even though he doesn't remember getting the Booklet in 1989, he would've been able to access it from 1993 onwards. He made further on-top contributions after that date but there's no record that he raised any queries about being able to change the SRD until more recently.

These events happened in 1989 and although Mr R's recollection is that he was told he could change the SRD at any time I'm not persuaded there's enough evidence to support that. I think it's likely, on balance, and having considered all the available evidence, Mr R may have been told that notwithstanding the SRD he'd selected, he could still retire at any time (subject to Inland Revenue regulations). That is the position as set out in the Member Booklet. However, as stated above that did not mean he could change the SRD.

So, on balance, I'm not satisfied on the basis of the information available to me that Mr R was given inaccurate or misleading information about being able to change the SRD in 1989 when he commenced the policy.

<u>Did Mr R consent to each of the SRDs?</u>

Mr R's pension arrangement included both protected rights benefits and non-protected rights benefits. As regards the protected rights part of his pension, I'm satisfied that the retirement date for this part of his pension was state pension age. This was set out in the Member Booklet.

The non-protected rights benefits could be built up by making "on-top contributions." These contributions could be made by Mr R or by his employer through regular or single premiums or additional contributions. Different SRDs could be selected for such contributions. So, although Mr R only had one pension policy it was made up of several parts. The Member Booklet described this arrangement as follows:

> *"This flexibility enables you to pay the maximum contributions permissible each year for tax relief purposes and also to provide phased retirement benefits."*

When Mr R applied to make an additional on-top contribution he was asked to select a retirement date for that contribution and he was then issued with a certificate for that part of his pension.

Mr R made further on-top contributions in 1990, 1991, 1993, 1996 and 1997. His employer made on-top contributions in 2003, 2007 and 2014.

Each time Mr R made an on-top contribution I can see that Prudential's representative completed a PFR with him which Mr R was asked to sign. I'm satisfied having read the information recorded on the PFRs that meetings took place before Mr R made further on-top contributions. The amount of the on-top contribution and the SRD (or selected term for that on-top contribution) was discussed. Mr R signed the PFRs by way of confirmation of this. An application form for each on-top contribution was then completed.

The application forms required Mr R to indicate his selected term. The form presented him with options concerning this. He could select the SRD which was:

- the same as his most recent Certificate,
- the same as any existing on-top certificate; or
- a new SRD for this particular on-top certificate.

Mr R says he didn't fill in the application forms but it is the case that each application form bears his signature. And before signing the forms I think it's fair and reasonable to have expected him to check the details that appeared on the form. A Member Certificate was then issued to Mr R confirming the SRD for each on-top contribution. So, Mr R would've been able to see the SRD that applied each time.

As I've mentioned above the on-top contributions were made to the pension policy and there was only one pension policy. Mr R has expressed concern that new policies may have been taken out each time, to increase commission payments, but I've not been provided with any evidence to support that.

Having looked at the information on the PFRs and the application forms, I'm satisfied on balance that each time Mr R made a new on-top contribution, he would've been aware he had a choice about whether to select a SRD which was the same as an existing certificate or whether to choose a new SRD. I say that because each of the PFRs indicate that the SRD was discussed in the context of Mr R's overall circumstances at the relevant time.

For example in 1990, he chose the same SRD as his existing certificate. Whereas in 1991 and 1993 he chose new (different) SRDs for these certificates. The PFRs completed in 1991 and 1993 indicate that Mr R was thinking about early retirement at this time. In 1996 and 1997 he chose the same SRD as he'd selected in 1993. In 1996 the PFR recorded that his primary goal was to maximise his income in retirement. His primary goal was recorded in 1997 as wanting to retire when he was aged 60.

Having read the PFRs I think it's clear Mr R was actively planning for his retirement. However, as is not unusual, as his personal and financial circumstances changed his views about when he could retire and what his income should be when he retired also changed. As the Member Booklet stated, Mr R's pension arrangements allowed him to build up parts of his pension so that he could access it at different times (the SRD), if that was what he chose to do. That meant he could phase his retirement.

The SRD on each of the application forms also matches the information recorded on the PFR (except for the on-top contribution made in 1996 which I'll comment further about below). There's no indication he asked, during any of the discussions when he made on-top contributions, to change the existing SRDs or requested that the SRDs should all be the same. And, as mentioned above he accepts he had a copy of the Member Booklet from 1993 which explained the importance of the SRD in more detail.

Mr R was issued with a Member Certificate for each on-top contribution which set out the SRD that applied.

In respect of the on-top contribution made in 1996, I have noted that the PFR completed on 16 January 1996 records that a term of 33 years for the new on-top contribution was discussed. However there was a subsequent meeting on 23 January 1996 when the application form was completed and at that date the SRD selected was the same as the previous certificate. There's no record of why that happened. However, having looked at the documentation available, I'm satisfied, on balance it's likely that further discussions took place on 23 January 1996 before the application form was completed. Mr R signed the PFR on both 16 January 1996 and again on 23 January 1996 to confirm that a further meeting had taken place. He also signed the application form on 23 January 1996.

So, having reviewed the PFRs and the Application forms, I'm satisfied that Mr R was asked to select the SRD for each of his on-top contributions. There was a discussion each time before he selected the SRD. And he would've been aware from those discussions that different SRDs would apply to different parts of his pension. There's nothing to indicate he challenged this or asked for reassurances about being able to change the SRDs at a future date. He also signed the application forms which set out the selected term that would apply.

I've then looked at the documentation Mr R signed in 2003, 2007 and 2014 when his employer made on-top contributions. Prudential didn't provide him with any advice regarding these on-top contributions. The application form stated as follows:

"When you first joined the plan, you chose the year in which you would like to retire and start receiving your pension benefits. However, you may not want the same retirement year to apply to your further payments from another source. If you would like to choose a different retirement year for these payments, then please advise us of this by filling in the boxes below.
If you don't want to change your retirement year then please leave the following blank*.*"*

(* text printed in bold on the form)

Mr R filled in different dates on these forms. So, I think he would've been aware, from the information on the form, that he was selecting different dates for different parts of his pension plan. There's no evidence to indicate that he queried this with Prudential.

In 2021, Mr R applied to revive his pension contributions which had been discontinued for a period of time. He enquired at that time about changing the SRDs to 2029. Prudential's letter dated 12 April 2021 made clear he could not do that. Copies of his Member Certificates were enclosed – each showing the SRD applicable. Prudential said:

"We are unable to accept the retirement date of September 2029. The retirement date for the existing benefits (dated….) cannot be changed. However you can extend the term by five years once the benefit reaches retirement date. You can start receiving your pension benefits at any age between 55 and 75."

I'm satisfied, on balance, the letter and enclosed Certificates reiterated, and were consistent with, the position as stated in the Member Booklet which was that Mr R could retire and take his benefits at any time (subject to Inland Revenue regulations) - but he wasn't permitted under the terms of the pension to change the SRD. The Certificates also set out the different SRDs that applied. I've noted Mr R doesn't appear to have challenged the contents of the letter or the Certificates at the time.

Having considered everything, I'm persuaded, on balance, that Mr R did consent to each of the SRDs.

<u>The administrative burden placed upon Mr R at each SRD and his concerns about how the funds are invested as the SRD approaches.</u>

As set out above, when explaining the SRD process for on-top contributions, the Member Booklet stated:

"This flexibility enables you to pay the maximum contributions permissible each year for tax relief purposes and also to provide phased retirement benefits."

Mr R could take the benefits relating to each member certificate at the SRD stated or he could choose not to take the benefits at that date. If he decided not to take the benefits until after the SRD he could leave the funds in the WPCA Fund and continue to make contributions or he could transfer the funds to the Deposit Fund.

Mr R has expressed concerns about how his funds are invested as each SRD approaches. However, because the funds are invested in a With Profits Fund, there wouldn't be any change to how Mr R's pension is invested in the run up to each SRD.

If Mr R chooses at the SRD to leave his funds in the WPCA Fund he may have to pay a Market Value Reduction (MVR) when he decides to retire. Prudential has explained that the

MVR is designed to protect investors in its WPCA Fund who are not taking their money out and its application means that Mr R would get a return based on the earnings of the With-Profits Fund over the period his funds had been invested. I would just point out that the application of an MVR in these circumstances is not unusual.

Mr R says that because Prudential won't agree to change all the SRDs to the same date, he'll have to contact it to change the SRD either one month or three months prior to each SRD – Prudential has given him conflicting information about this. He says this is stressful for him since he could end up in receipt of a pension he didn't want to be paid. He just wants to be able to prepare for the future and plan his transition into retirement.

Mr R has referred to the conflicting information he's been given about when he needs to contact Prudential. In its communication with Mr R dated 28 April 2023 Prudential indicated that he should contact it three months before each SRD if he wanted to extend the term. The reference to one month was made in its communication dated 1 August 2023. However, that appears to be a reference to the period of notice Prudential required should Mr R decide he wanted to retire and take all the segments of his plan on one date.

I've thought about what Mr R has said about the administrative burden this places on him. It is the case that at each of the SRDs Mr R will be able to make choices, in line with the information set out in the Member Booklet. However, that was a feature of the pension he set up. And, although the pension arrangement with Prudential does mean he needs to remain actively involved in how his pension is invested in the lead up to the date when he chooses to retire I'm not persuaded that means he cannot prepare for the future or plan his transition into retirement.

Having considered everything, although I don't doubt Mr R may have been told in 1989 that he could choose to retire earlier or later than the SRD he'd chosen, I'm not persuaded on balance he was told he could change the SRD at any time. Should he choose not to retire at the SRD, he has options (as set out in the Member Booklet) regarding how he wants his funds to remain invested.

I'm satisfied, on balance, that Prudential is acting in line with the Member Booklet and that it is not otherwise acting in an unfair or unreasonable way when it won't accede to Mr R's request to change all the SRDs to the same date.

Prudential has accepted that its service could have been better after Mr R raised these matters with it. It's paid him £350 (in total) for the distress and inconvenience caused. I think that's fair and reasonable. I don't require it to have to do anything more.

My final decision

For the reasons given above I do not uphold this complaint about The Prudential Assurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 5 April 2024.

Irene Martin
Ombudsman