DRN-5646951

The complaint

Mr R complains that The Prudential Assurance Company Limited ('Prudential') mis-sold him the pension through which he contracted-out of the Second Earnings Related Pension Scheme ('SERPS'). He says that he was pressured into taking out the pension and wasn't informed about the repercussions of contracting out of SERPS.

What happened

Mr R met a Prudential adviser in 1989. The adviser recommended that Mr R set up a personal pension with Prudential, contract out of SERPS and direct the rebates to the policy and make ongoing monthly contributions of £20 per month. With monies to be invested in the With-Profits fund.

Given when this sale took place, there is understandably a limited amount of information from the point of sale. We've been provided with the available documentation and some later issued correspondence. I've set out the details of some of this below.

The points of sale documentation

A personal financial review, signed and dated on 15 March 1989, set out in a section titled advice given:

> *"Advised personal pension & opting out of SERPS"*

This also recorded some information about Mr R's circumstances, including that:

- He was living with his parents.
- He had existing endowment and insurance policies.

The application form, signed and dated on the same day, recorded that:

- Mr R would be 24 at his next birthday.
- He was employed earning an annual salary of £6,084.
- He wasn't a member of an occupational pension scheme nor was he or his employer contributing or proposing to contribute to another personal pension arrangement.
- His selected term until retirement was 36 years and he would make gross monthly contributions of £20.
- Contracted out rebates were to be backdated to 6 April 1987.
- He wasn't currently participating in a superannuation scheme of his employer.

A personal pension quotation prepared for Mr R, set out that it was assumed for the purposes of the illustration that Mr R had opted out of SERPS from the tax year starting 6 April 1987. It also illustrated the pension Mr R may receive from the policy, accrued from contracted out rebates, using two different assumed rates of return.

Mr R proceeded with setting up a policy and contracting out of SERPS but, whilst the policy was intended to receive ongoing contributions, these were never effected. Prudential has said that it received rebates for years ending in April 1988, April 1989, April 1991 and then nothing until April 2009.

Background to the complaint

Concerned that his policy may have been mis-sold and the impact that may have had on his state pension entitlement Mr R complained to Prudential. Prudential's final response letter is dated 30 January 2024, given that Mr R's complaint was raised on 19 November 2024, this appears to have been a typographical error. Prudential didn't uphold the substance of Mr R's complaint, but it did award him £50 for the delay in it issuing a response.

Unhappy with Prudential's response, Mr R referred his complaint to this service.

Mr R told us in his complaint submissions about the sale of the policy and the concerns that he had. Amongst other things, he said that:

- A Prudential salesman approached him whilst he was out shopping in a town centre.
- The salesman pressured him into taking out a pension, as he wasn't sure he needed one.
- He was confused and didn't understand what the salesman was saying.
- At the time, he was in his early twenties and not in secure permanent employment. He wasn't asked about his financial status or ability to pay contributions.
- The salesman used scare tactics, warning him about the future and how this may affect him and his family.
- Like most young people, he didn't understand how pensions work, and the complex issues involved.
- He recalls being told that he would be contracted out of SERPS but wasn't informed about the repercussions of doing so.
- It was not until recently that he became aware of what the impact of this may be.

One of our investigators reviewed the complaint and concluded that it shouldn't be upheld. The investigator explained the background to SERPS and the key issues they'd looked at in considering Mr R's complaint. They concluded that, at the time of the sale, Mr R had been significantly below the pivotal age (the age after which it had been determined that an individual was unlikely to benefit from contracting out of SERPS) and above the lower earnings limit (the level of earnings below which it had been determined that an individual would be unlikely to benefit from contracting out of SERPS). Whilst there was limited information from the time of the sale, the investigator wasn't persuaded that the Prudential pension had been mis-sold or that contracting out of SERPS wasn't suitable for Mr R at the time.

Mr R disagreed with the investigator's view and made several further submissions. I've considered all of the submissions Mr R made in their entirety. However, here I've set out only a high-level summary of what I consider to be the key points:

- He remains of the view that the pension was mis-sold to him – at the time of the sale, he was young, financially inexperienced with little understanding of pensions and certainly not aware of the implications of contracting out of SERPS.
- He considers that he was a vulnerable consumer at that point in his life – he was approached by a Prudential representative in a town centre and felt pressured into signing up for something he didn't understand.

- Prudential claim that everything was explained to him, but he was unfamiliar with the industry jargon. The representative didn't warn him of the potential losses, charges or the implications if contributions were not maintained nor that he could potentially lose eligibility for certain state pension entitlements.
- The decision to opt out of SERPS was based on assurances that this would benefit him, which has proven to be untrue. If he had been properly advised, he would never have agreed to do it. The long-term consequences of opting out were not explained clearly enough for someone in his position to make an informed decision, this has caused irreversible harm.
- No proper evaluation was carried out regarding his employment stability or whether this product was suitable for someone in his situation, he was the sole financial support for his family. Had an affordability assessment been carried out, a personal pension scheme of this nature would clearly have been deemed unsuitable for him.
- He specifically recalls telling the adviser that he was only comfortable with low risk, due to his financial situation. Despite this, he was sold a plan where his funds were exposed to market risk, however "low risk" the With-Profits fund was claimed to be. Crucially, he was never warned that even low-risk investments can underperform SERPS or be subject to market volatility. This was misleading.
- Prudential's own records show that irregular payments were received, which should have raised red flags at the time.
- There is a discrepancy in the start date of his policy.
- No ongoing information or support has been provided by Prudential. No documentation or policy information was provided to him until 2024.
- The point-of-sale paperwork reveals improper alterations to legal documents, including handwritten changes, unexplained strikes through statutory declarations, initials added without his knowledge or consent, incomplete or missing entries, including key dates such as his SERPS start date and earnings history.

The investigator explained that they had reviewed the submissions made but that their view remained the same. Because agreement couldn't be reached, this complaint was passed to me for 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've reached the same conclusion as the investigator and for broadly the same reasons.

The parties to this complaint have provided detailed submissions to support their respective positions. I'm grateful to them for taking the time to do so. I've considered these submissions in their entirety. However, I trust that they will not take the fact that my decision focuses on what I consider to be the central issues as a discourtesy. The purpose of this decision is not to address every point raised in detail, but to set out my findings, on what I consider to be the *main points*, and reasons for reaching them.

It's my role to fairly and reasonably decide if the respondent business (in this case Prudential) has done anything wrong in respect of the individual circumstances of the complaint made and – if I find that the business has done something wrong – award appropriate redress for any material loss or distress and inconvenience suffered by the complainant (in this case Mr R) as a result of this.

When considering what is fair and reasonable in the circumstances, I need to take account of relevant law and regulations, regulator's rules, guidance and standards, codes of practice and, where appropriate, what I consider to have been good industry practice *at the relevant time*. Ultimately, I'm required to make a decision that I consider to be fair and reasonable in all the circumstances of the case.

Preliminary points

Before I set out my findings on Mr R's complaint, there are a couple of preliminary points that I think it would be helpful to clarify. The sale took place around 36 years ago. Understandably there is limited contemporaneous evidence.

The financial advice landscape was vastly different at the time to what it is now. For example, the rules, regulations and industry standards that apply today didn't – for the most part – apply then. It is also the case that the economic outlook at the time was very different, for example, interest rates and annuity rates (the rate by which an accrued pension fund is converted into an income in retirement) were much higher. For context, interest rates peaked at 15% in 1989 and annuity rates were similar, in practical terms – in so far as is relevant to Mr R's complaint – this means that the buying power of a pension fund was considerably higher then, than it is now. Or, in other words, the annual income (in the form of an annuity) that one could purchase with a pension fund was much higher then than it would be today with the same fund. That is important here because these are factors that were being used to forecast/illustrate whether or not Mr R was likely to be better off by contracting out of SERPS.

I can't consider the complaint with the benefit of hindsight (what is now known to have transpired since) or consider the business' actions in light of rules, regulations and standards that didn't apply at the time. I must consider the complaint based on what would reasonably have been known to the parties to the complaint at the time and the rules, regulations and standards as they applied at the time.

What is SERPS?

SERPS was a top-up to the basic state pension payable at the individual's state pension age. It was also sometimes called the additional state pension. So, in addition to their basic state pension, individuals would also receive a SERPS pension at retirement (where entitled).

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

Individuals 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 Mr R did – or by joining an occupational pension scheme that was contracted out. Individuals could backdate this decision by two years, as in Mr R case, whilst the sale took place in 1989 his contracting out was backdated to 1987. The government also offered incentives to people contracting out at the time.

For the avoidance of doubt, contracting out impacted only the above additional state pension provision, Mr R's basic state pension (as it was) was unaffected by the decision to opt out of SERPS using the Prudential personal pension plan.

Since Mr R took out the policy a number of changes to state pension provision have taken place. For example, as of 6 April 2016, basic state and SERPS pensions were replaced by a flat rate state pension. Before this, in 2012, Mr R was automatically contracted back in to SERPS.

The sale of the policy and whether it was right for Mr R

Prudential was a member of the Life Assurance and Unit Trust Regulatory Organisation (LAUTRO) at the time of this sale. 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. Although I note that a personal financial review form was completed for Mr R in this case.

Mr R has told us that Prudential didn't give him enough information to enable him to make an informed decision at the time of the sale. And, for example, that he was an agency worker and in a financially unstable position with limited disposable income. But the adviser could reasonably only base their recommendation on the information provided to them at the time by Mr R and based on the available information, he told the adviser that he was employed, working for a utilities company and earning what was a reasonable salary at the time.

Taking into account what I know about Mr R's circumstances at the time (as they were recorded in the forms), I haven't seen anything that makes me think the advice Mr R was given about contracting out of SERPS was unsuitable for him.

When the government decided to allow individuals to contract-out of SERPS, it offered incentives to encourage them to do so. Pension providers' 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 (albeit for the reasons set out earlier in this decision these would not necessarily be considered to be conservative today) and were used to set guidelines on whether an individual was likely to benefit from contracting out. These included an upper limit on age "pivotal age" and a lower limit on income.

Based on what Prudential has told us, its pivotal age at the time for men was 45. So, it considered that males under 45 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 by the government. Mr R was significantly below the pivotal age for men, meaning there was substantial time and opportunity for investment growth before he would likely retire.

Another factor used to determine whether someone was likely to be better off contracting out of SERPS was their level of income. The application form confirmed that Mr R's income was £6,084 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 set a minimum level of earnings 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 earnings limit was unreasonable and clearly Mr R's recorded earnings were above that limit.

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. Nothing recorded indicated that Mr R wouldn't be able to do so. As I understand it, in the event, Prudential's receipt of rebates for Mr R was intermittent and he has now said that this ought to have been a red flag to Prudential. However, I remain of the view that there was nothing that I have seen recorded at the time of the sale that indicated this being likelihood.

So, in conclusion, based on Mr R's circumstances as recorded at the time, he met the guidelines set by Prudential for recommending that an individual contract out of SERPS using one of its personal pensions.

I've also considered the fact that there was some investment risk attached to Mr R's pension plan, and he didn't appear to have much, if any, previous investment experience. Contracting out of SERPS meant that Mr R would be giving up his entitlement to SERPS in the hope that the contributions would grow to ultimately provide an income in excess of the pension he could have expected to receive from the state. There is no record of Mr R's attitude to risk, but the contributions were invested into the With-Profits fund, which was considered to be a relatively cautious fund at the time. I haven't seen anything to suggest Mr R was unable to take any risk with these funds. So, I don't think the arrangement was too risky for him, given that he had over 36 years before the normal retirement date of the policy and so he had time to recoup any potential losses.

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

The sales process

I acknowledge that Mr R doesn't consider that Prudential fully explained the pension plan at the time of the sale. And that he considers that if Prudential had done the correct due diligence, it would've advised him to stay in SERPS. On the other hand, Prudential has said that it explained the benefits of commencing a pension and that the recommendation was appropriate. I have no way of knowing definitively what information Prudential shared with Mr R, other than the limited documentation both parties have provided. But I note that a declaration it appears Mr R signed in the application form 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. Mr R now says that he categorically did not receive any documentation at the time, but he did sign a declaration confirming he had. Overall, I consider it more likely than not that this guide was provided and that it would have explained the features of the policy.

Mr R 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.

In the notes to the personal pension quotation, it was set out 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 (the regulatory authority for the marketing of life assurance and unit trusts) 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 tax year, **which you will be giving up by contracting out** and do not take account of any premium which may be paid in respect of future tax years.*
>
> *The figures quoted in these illustrations comply with the rates of return and other factors as set out in the Lautro bases, the higher illustration representing a future real rate of return in excess of the annual increase in national average earnings (used for determining SERPS benefits) of 2.5% per annum in the period up to retirement age and the lower illustration representing a future real rate of return of 0.5% per annum. It is assumed that an annuity increasing at 3% per annum is purchased at retirement*

> *using rates of interest of 10% (associated with the higher illustration) and 8% (associated with the lower illustration).*
>
> ***The two amounts do not represent the upper and lower limits of the possible amount of 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.*** *"* [my emphasis]

So, based on the available documentation, I don't agree that Mr R wasn't made aware of the implications of the transaction at the time. He was told that he would be giving up the SERPS benefit for a pension that would be based on a number of variable factors, including investment growth/bonuses added to the policy.

I've carefully considered everything that Mr R has told us about the sales process and that he felt pressured into taking out the policy. However, I'm not persuaded, based on the available evidence, that this policy was mis-sold.

Paperwork

Mr R has raised a number of concerns about the paperwork completed at point of sale. For example, that there were sections left incomplete and/or crossed through by the adviser. It is not uncommon for sections of paperwork not to be completed if not relevant to the particular sale.

As an example, the supplementary health form that formed part of the application form was only to be completed *"if Life Cover and/or Waiver of Premium Supplement is proposed",* as noted in the form. And, neither benefit was sold in this case. So, I don't think the fact that the sections relevant to the sale of those features were crossed out/weren't completed means that there was a failing on Prudential's part in relation to this.

I understand that this will likely come as a significant disappointment to Mr R, it is clear from his complaint submissions that he feels very strongly about the issues he has raised. However, having considered each element of Mr R's complaint, I don't think that any part of his complaint should be upheld. This is not a reflection of the seriousness of the issues Mr R complains about but rather that I'm not persuaded that what's gone wrong here is because of a failing on Prudential's part.

My final decision

My final decision is that I don't uphold Mr R's complaint about The Prudential Assurance Company Limited, and I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 28 January 2026.

Nicola Curnow
Ombudsman