

complaint

Mr M is unhappy about the way The Prudential Assurance Company Limited (Prudential) dealt with contributions he received historically when he was contracted-out of the state earnings related pension scheme (SERPS).

background

In summary Mr M complains that Prudential are responsible for transferring his contracted-in contributions to his occupational pension scheme (OPS) in the absence of his agreement.

Mr M received contracted-out contributions into a plan he had with Prudential. In addition Mr M made personal contributions. Prior to Mr M's complaint in 2018, enquiries about historic contributions along the same lines as this complaint were made by him to Prudential in 2015.

On 16 June 2015 Mr M wrote to Prudential with a letter headed "*Policy Search*". In it he said he'd written "*several weeks ago to ask for a policy search*". He said he and his wife "*were contracted out to Prudential and... used to receive annual letters asking us if we were wanting to contract back in to the government pension scheme. We never did and my wife received correspondence this year to ask her what she wanted to do with the pension that was now available to her since we had automatically been contracted back into the government scheme*".

Mr M told Prudential he hadn't kept the letter he'd referred to, which he'd said asked him if he wanted to contract back in. Mr M went on to explain he had nothing with his plan number.

Mr M told Prudential who his employers were and said that he believed his employer's pension scheme (of which he was a member) was managed by Prudential. Mr M said he was unaware of signing anything over to his employers "*but needed to trace what had happened to his contributions over the years*". Mr M said he and his wife were contracted-out to Prudential. From what we've been told Mr M's employers in 2015 were not the same as the ones he had in the early 1990s, when he set up the receipt of contracted-out contributions, about which he now complains.

On 10 July 2015 Prudential wrote to Mrs M and confirmed what she was able to take from her plan. On 14 July 2015 Prudential wrote to Mr M. They said they could confirm Mr M was "*contracted out of the state second pension (S2P) with Prudential from 6 April 1987. The last contribution we received into this plan was for the tax year 1993. The benefits were then transferred to [his OPS] on 25 September 1995*". They told him that if he wanted to know his contracted back in date he should ask the OPS.

Mr M told Prudential this information wasn't right. He said the money he was trying to locate wasn't the OPS transfer, it was a private pension he'd had from around 1990 until he transferred in 1995. He said "*I was well aware of this it was my choice and it did not affect my contracted out agreement*".

Mr M didn't think he would have continued to receive correspondence from Prudential asking if he wanted to contract back in, if his transfer had changed his position or if he was contracted-in. He asked Prudential to trace the transaction and explain why his wife had been contacted and not him. Prudential can't find anything that suggests Mr M was contacted or should have been.

Mr M said his transfer in 1995 had only been in relation his personal pension plan (PPP) and had nothing to do with his contracted-out status. Prudential continued to contact him every year, (he said), until several years before 2015, along with his wife, asking if they wanted to contract back in. Prudential can't find anything that suggests Mr M was contacted.

In January 2018 Mrs M contacted Prudential. Mrs M said her husband had a Prudential PPP previously because his last employer did not offer a company pension scheme. She said that in 1993 her husband had started working for a company where she was employed, which had a good company OPS. Mr M joined the OPS and transferred his PPP into the scheme.

She said that a few years before 1993 (they weren't sure of the date), they had both decided to contract-out from the government scheme and chose Prudential to manage this for them. Mrs M's view was that this was entirely independent of the PPP she said her husband later started.

Mrs M said that every year they would both receive separate correspondence with a statement giving details of how the scheme was progressing and in later years they received correspondence suggesting they may want to consider contracting back in to the government scheme. Mrs M said they chose not to do anything. Mrs M went on to say she been contacted by Prudential in 2015 with details of her contributions and was advised to seek advice. But they were unhappy as her husband didn't receive any notifications.

She said that initially they'd been told Prudential couldn't trace anything. Then they were told Mr M had cancelled his contracted-out facility with Prudential in 1993 when he joined the OPS. Mrs M said this wasn't right. She says he stopped paying the PPP that was transferred; but in 1993 there wasn't an option available to cancel the contracted-out scheme and transfer it to a company scheme, as the contributions were taken by HMRC. Mr and Mrs M don't accept the explanation provided about why this isn't right.

Mrs M posed questions about the correspondence she says they both received. Prudential don't accept this happened. Mrs M asked, why, if Mr M had cancelled the agreement in 1993, had Prudential contacted him in 2006 asking him if he wanted to contract back into the government scheme. Prudential don't accept this happened.

In January 2018 Prudential wrote to Mr M. They didn't uphold his complaint. At this time it was thought Mr M was complaining that he didn't believe Prudential had transferred his contracted-out contributions plan at the same time as his private pension plan, which Mr M was saying was separate. Prudential understood Mr M was also questioning correspondence he said he'd received from Prudential about contracted-out payments since the date his funds had been transferred to the OPS. In summary Prudential set out:

- With Mr M's plan it was possible to receive contracted out and personal contributions as different benefit layers. And this was what had happened here.
- The commencement date for the receipt of contracted-out benefits was always backdated to the start of the tax year (so in Mr M's case 6 April 1987).
- Contributions were received to Mr M's plan for the tax years 1987- 1993 (inclusive).
- On 1 December 1988 Mr M began making personal pension contributions into the plan (he'd also added a now lapsed life assurance element).

Prudential explained that because it was 23 years since Mr M's transfer they didn't have any correspondence. But said at the time of the transfer, a transfer valuation would have been provided. This valuation would have given the value of each accrued benefit separately. Their records showed that on 22 August 1994, £1,947.23 (accrued from Mr M's personal contributions) and £4,878.53 (accrued from Mr M's contracted-out payments) was transferred to Mr M's OPS.

Prudential also explained that the receiving OPS would have had to confirm in writing to Prudential, prior to any transfer, that they were willing to accept a fund comprising of accrued contracted-out benefits. Following the transfer (and any such transfer) they would have told Her Majesty's Revenue and Customs (HMRC) that Mr M was no longer contracted-out with Prudential.

They went on to set out that this didn't necessarily mean Mr M was automatically contracted back into the Government Pension Scheme. It simply meant that no further contributions were to be made to Prudential in respect of Mr M. So Prudential wouldn't know what happened thereafter.

Prudential told Mr M, HMRC should be able to confirm if his payments ceased at the time or continued to be paid to his new scheme.

Prudential also invited Mr M to forward to copies of any of the correspondence he'd said he'd received from them, to investigate; and they enclosed a prepaid envelope for this purpose. It's understood nothing was provided to Prudential.

Mr and Mrs M didn't accept Prudential's response to their complaint, and went on to complaint to this service. They feel there is a risk Mr M has lost money to which he is entitled. Mrs M says she received a large lump sum based on the facility they'd put in place with Prudential in the 1980's. So they want to find out where her husband's National Insurance contributions have been going since then. Mrs M has explained the relevant OPS went into receivership in 2009; albeit her husband left the company in 1996 so she thinks there would only have been three years of contributions.

Mrs M told us they had paperwork from the OPS "*pension protection situation*" and she thought they would be able to find some documentation from between 1993 to 2006. Mrs M said this would substantiate there was a contracted-out facility for her husband being managed by Prudential. She also told us that she thinks Prudential told HMRC the wrong information if they told HMRC her husband was no longer receiving contracted-out contributions to his plan.

Mrs M didn't accept what's been said about Mr M's plan being transferred over, or that there's no record of a further plan. She wants a detailed record to be provided and copies of any agreements signed relevant to these matters.

Overall it's now said that after Mr M started a plan to receive his contracted-out contributions in April 1987, Prudential wrongly batched this plan together with Mr M's private pension and transferred them both to his OPS. And they said this was done without Mr M's knowledge or agreement.

Prudential repeated to us what they'd said to Mr and Mrs M and sent us their file. This included confirmation Mr M hadn't been sent any annual statements after his funds had been

transferred to the OPS. They say this is because they received and held no further funds for him. They also sent us a copy of a screen shot of their record of the transfer transaction.

Our investigator didn't uphold Mr M's complaint, and didn't think Prudential had done anything wrong. Mrs M, on behalf of her husband, rejected the investigator's view. She said Prudential must prove their justification of transferring a policy without their written approval.

I issued a provisional decision on 16 July 2018 and explained that although I tended to agree with the investigator in general terms, I wanted to provide some further information and reasoning, and hoped this would assist Mr and Mrs M.

We explained that as the OPS had been accepted into the Pension Protection Fund (PPF) in 2011, the PPF should be able to confirm further information. This might include what had been received from Prudential and when; as well as whether contracted-out contributions had been accepted. We also reminded Mr and Mrs M that HMRC would be able to assist with information on when Mr M was contracted-out and if he was then contracted-in and where all such contributions were paid.

In addition I asked for examples of the correspondence Mrs M said had been received over years asking if Mr M wanted to contact back in.

Mr and Mrs M thought they'd previously contacted a government department about contributions but had only been provided with figures they didn't understand. Mrs M thought it might now be of some assistance so she was going to look again.

Mrs M stressed their complaint was a concern Prudential had transferred Mr M's two plans to the OPS when the instruction was only to transfer Mr M's PPP to the OPS.

Prudential confirmed they'd received no further contracted-out rebates for Mr M since 1993. Their records wouldn't show if someone contracted back in, it wasn't a matter for them. This was something for HMRC. But they would have received further rebate contribution payments if that hadn't been the case; and they hadn't.

provisional decision

In summary I explained, that subject to further submissions, I intended to reject Mr M's complaint. There was nothing that made me think Prudential had done anything wrong when transferring funds, and I didn't intend to ask them to do anything further.

I accepted the passage of time might make it harder to recall precise details and dates, and I'd taken that into account. I thought it was reasonable to accept Prudential no longer held all the original file documentation. Prudential had invited Mr and Mrs M to provide copies of the correspondence referred to as having been received, as they didn't have anything that suggested anything had been sent out to Mr M. And we'd also invited Mr and Mrs M to provide the same. I explained in my provisional decision I wasn't clear whether it was said Mr M was sent yearly statements and information, or that in 2006 Mr M was sent correspondence asking if he'd like to contract back in.

By the time I reached my provisional decision it appeared to me, despite my earlier uncertainty, Mr and Mrs M accepted Mr M's funds (including the contracted-out contributions) were transferred over to the OPS. Their unhappiness now stemmed from the belief these contributions were batched with his personal contributions for the transfer; and

they said this was done without his permission. And it was being said Prudential shouldn't have been able to transfer the plan without their written approval.

I thought it was sufficiently clear the monies transferred to the OPS (in August 1994) included all the funds derived from the contracted-out contributions received into Mr M's plan with Prudential, as well as the funds which represented his personal contributions. And I didn't think there was anything that made me think Prudential shouldn't have made the transfer as and when they did.

It appeared to me Mr and Mrs M thought Mr M had two distinct plans receiving two different types of contributions. But I didn't think this was accurate. I accepted what Prudential had said, based on what I'd seen. Mr M had a plan that accepted the two different types of contributions. This was what had been part of the regime when contracting out had been introduced.

I also understood that although Mr M hadn't started making personal contribution to the plan until December 1988, the record of when contracted- out contributions were received would always be back dated to the start of the tax year. Here the date recorded had been 6 April 1987; albeit there were specific reasons why this date might also have been recorded, due to the way contracting out first started.

In my provisional decision I set out some of the background. In 1987 the government announced that from 1 July 1988 it would be possible to contract-out of the state earnings-related pension scheme (SERPS) through a personal pension. Personal pensions were to attract minimum contributions paid by the relevant government department. These were to be made up of a partial rebate of national insurance contributions and until April 1993, there was a special incentive payment available. This meant that people taking out a personal pension before 6 April 1989 were able to backdate their membership to 6 April 1987 and claim an extra year's minimum contributions, including the incentive.

I explained how I thought this applied to Mr M's plan. I was of the opinion this was what had happened in Mr M's situation and was reflected by Prudential's record of the activity at the time. So where Prudential's records for Mr M showed the start date of his plan being 6 April 1987, this appeared to have potentially been the back dated incentive start date; and I thought Mr M's plan had been started technically on 1 December 1988.

Prudential's record of the transfer showed the breakdown of the contributions of protected rights and non-protected rights. And I accepted these reflected the different types of contributions (personal and contracted-out) received at the time. And I accepted this information would have been provided to Mr M at the time of transfer.

I thought the OPS would have provided sufficient information about the transfer at the time; and Mr M would have had to request the transfer, otherwise the transfer of either type of contribution couldn't have been completed.

I went on to explain that every OPS would have had their own rules. But schemes wouldn't have agreed and accepted transfers in without a request and agreement from the prospective member.

This would have specifically included an agreement from the OPS to accept a transfer in of any funds derived from previously contracted-out contributions, as these came with particular requirements and not all OPS' would have accepted such funds. Prudential

wouldn't have played a role in this, they wouldn't have made a request, they simply would have administered their part of the transfer of the funds, when instructed and having received what they required to act as instructed by Mr M and the OPS.

I accepted Prudential's explanation the OPS would have had to confirm in writing to Prudential prior to any transfer, that they were willing to accept a fund comprising of accrued contracted-out benefits. And that following the transfer (and any such transfer) they would have told HMRC (and would have been required to tell HMRC) that Mr M was no longer contracted-out with Prudential. Based on what I'd seen this was what I thought had happened here.

In addition to the recommendation we made to Mr M to contact HMRC for more information, we also confirmed to Mr and Mrs M that usually the OPS would be a useful source of information. And they would be able to confirm what funds were received relating to transfers in, including those derived from contracted-out contributions, and where contracted-in contributions followed and records on such transfers, agreements and requirements. As this OPS had been accepted into the PPF we repeated our recommendation to ask the PPF for further information too.

In my provisional decision I also accepted that Prudential received no further contracted-out contributions in relation to Mr M following the transfer. And I went on to set out further information about what would usually happen once a person joined their OPS, if it was a scheme that was generally contracted-in (as this one appeared to have been). Here I thought, once Mr M had become a member of his OPS, then any contributions would have automatically gone to the OPS thereafter. This was the usual procedure with a scheme that accepted contracted-in contributions. HMRC should be able to confirm this.

I explained I'd understood that Mr and Mrs M didn't think Prudential would have Prudential continued to write to Mr M about being contracted-out or contributions received, if he really had been contracted back in. I understood nothing had yet been provided by Mr M and that Prudential say no annual statements were sent after Mr M's funds were transferred.

Mr and Mrs M's response to provisional decision

Mrs M say the main thrust of the complaint is the question of why Mr M's two plans were transferred to the OPS, when their instruction was to transfer one PPP to one OPS. She stresses their continued belief there were two plans (a plan to accept contracted-out contributions and a PPP) which weren't started at the same time or on the same terms. They don't think my provisional decision provided an answer to this.

They don't think anyone would have asked for two plans to be transferred over and say they want to be in the same position as many people they know.

Mrs M says correspondence from Prudential demonstrates they couldn't find the contracted-out agreement, which must mean what happened here was unusual.

Mrs M wants to know who authorised both the transactions i.e. she believes there were two transfers, in her husband's name. She says they only agreed one instruction and says she asked Prudential to provide evidence they issued an instruction to transfer both plans or that they made Mr and Mrs M aware this has happened.

Mrs M doesn't think there's any evidence that Mr M was informed about what was going on, or that he was no longer receiving contracted out contributions to Prudential. And Mrs M draws an analogy with mis-selling in other sectors.

my findings

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 am not departing from my provisional decision, or the original view issued by the investigator. In other words, I am not upholding Mr M's complaint, and for the reasons I've already outlined.

I understand this will disappoint Mr and Mrs M, and I am sorry they have not found the information we've provided has assisted. I appreciate they think Prudential went against clear instructions to only transfer Mr M's plan in relation to his personal contributions. But based on everything I've seen, I don't accept this is an accurate description of what happened.

I continue to accept Prudential would have only transferred Mr M's benefits to his OPS where instructed to do so. This is due to the requirements that were in place at the time about such transfers. And based on the requirements I think it's likely Mr M would have been asked to sign, authorize and confirm requests before any transfer could be completed.

All OPS' would need to confirm they agreed to accept any funds. And there would be different considerations for an OPS to agree before accepting funds derived from contracted-out contributions (as they did here), as opposed to those representing personal contributions. Such a request would have been dealt with directly between the OPS and the prospective member to be (Mr M) here. Prudential would not have been involved. The OPS would have had its own procedures and requirements.

Prudential wouldn't have been able to process and complete such a transfer without a prior request and agreement and the OPS wouldn't have accepted the transfer from Prudential without having indicated prior their agreement. In addition to Mr M needing to authorize what he wanted transferred, I think Mr M would have received sufficient information at the time to identify the funds being transferred included those derived from his contracted-out contributions. I accept that at the time of the transfer, a transfer valuation would have been provided. This valuation would have given the value of each accrued benefit separately.

I accept that after this transfer was completed Prudential would have told HMRC that they were no longer receiving any contracted-out contributions for Mr M; and they were required to do so.

So I don't accept the main thrust of this complaint. In other words that Prudential wrongly, and in excess of any authority, transferred the contracted-out contributions paid into Mr M's Prudential plan.

I've seen that originally Mrs M complained that in the early 1990s there wasn't an option available to cancel the contracted-out scheme and transfer it to a company scheme, as the contributions were taken by HMRC. I don't think this point has been repeated, but I hope it's understood this isn't accurate.

I understand Mr and Mrs M want to see the paperwork from the time. But I don't think it's unreasonable given the passage of time, that Prudential don't have copies of the original

transfer requests or application forms. I accept Prudential have retained sufficient information here to identify what happened in general terms.

Mr and Mrs M haven't provided any of the correspondence they say Mr M received from Prudential following his transfer, and which they feel led them to reasonably believe he was still contracted-out of SERPS. I have seen Mr M has referred apparently on at least one occasion to not having retained a letter. And equally I understand Prudential don't accept they sent anything. I don't think I am required to make any final decision here about whether any correspondence was sent or not; as it wouldn't change my decision on the main complaint here, whether Prudential transferred Mr M's fund comprising of contracted-out rebates without his permission. As I don't think Prudential could have done it without his permission.

But for completeness I haven't seen anything that makes me think Prudential wrongly suggested to Mr M that he might be receiving contracted-out contributions into a Prudential plan after the transfer.

I understand that at some stage it was also suggested that Prudential shouldn't have then told HMRC that Mr M was no longer contracted-out. But there's nothing that makes me think this did happen. I accept Prudential were required to tell HMRC that they were no longer accepting contracted-out rebates for Mr M. His status thereafter was not a matter for Prudential.

It does appear here, as I've explained, Mr M joined a scheme that was contracted-in, and so having asked to join the scheme, it's likely his OPS would have automatically received contracted-in payments thereafter. As I've explained each OPS would have had its own rules, but this was how things generally operated, and what Mr M did or didn't request when joining his OPS, would not have been something Prudential would have been involved in, or responsible for.

It may be that the OPS and/ or the PPF will have more information on what took place at the time. But I haven't seen anything arising from any enquiries made by Mr M of either of these entities. Nor have I seen anything from HMRC. But I don't think I need to here to reach a decision on this complaint.

I accept Prudential didn't receive any further contracted-out contributions in Mr M's name after the transfer. I understand that when Mr M was initially complaining, one of the main objectives was to find out where his National Insurance payments had gone. HMRC will be able to provide a full history of all of Mr M's contributions, any rebates and where, when and how he was contracted-out or contracted-in.

I've seen Mrs M has referred to having worked for the same employers at the same time, (albeit she'd started at an earlier date) and she posed her thinking that it doesn't make sense that only Mr M was contracted back in to the OPS and not her too. But I don't think the position is comparable.

my final decision

So for the reasons given, I don't uphold Mr M's complaint about The Prudential Assurance Company Limited.

Under our rules, I'm required to ask Mr M to accept or reject my decision before 5 October 2018.

Louise Wilson
ombudsman