

complaint

Mr W complained that he had received incorrect advice to contract out of the State Earnings Related Pension Scheme (SERPS) from The Prudential Assurance Company Limited (Prudential).

He believes he's been financially disadvantaged as a result of the advice.

background

Mr W was advised to contract out of SERPS in July 1998.

At that time the pivotal age for a male policy holder was 45. The policy holder should also be earning more than £5,000 and be able to opt out for a minimum of 5 years. If those criteria were met then it was thought, at the time, that contracting out would be beneficial.

Mr W confirmed he was 36 at the time of the advice. He estimated his earnings were around £13,000 for the tax year starting on 6 April 1987. So the adjudicator thought his circumstances meant the advice to contract out would have been suitable at the time.

Mr W says that he wouldn't have taken any risk with his future pension. The adjudicator accepted Mr W's position on this. But she said it was difficult to say, some 28 years later, what written documentation Mr W was given outlining the potential risks.

Mr W felt that Prudential should have advised him to opt back in sooner than they did. The adjudicator understood why Mr W thought that. But she concluded Prudential weren't obliged to do this. She also said she couldn't hold Prudential responsible for the government changing or stopping the incentives it had introduced to encourage contracting out of SERPS.

The adjudicator understood Mr W's disappointment at the investment returns. But she thought the growth assumptions would have been considered reasonable at the time. And that based on that assumed growth there was a reasonable prospect that opting out of SERPS would provide some benefit for Mr W.

The adjudicator didn't consider the implications of contracting out if Mr W had been eligible to join an employer's scheme as Mr W said there wasn't one available to him.

More recently Mr W has said that he was offered a guarantee by Prudential. What happened was that Prudential reviewed advice it had given to Mr W to take out a personal pension plan instead of joining his employer's pension scheme. Prudential guaranteed to make good any losses Mr W had suffered. When Mr W was made redundant in 2006 Prudential calculated the value of the guarantee and augmented Mr W's plan by the shortfall that had been identified.

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 agree with what the adjudicator's said. I don't think for the reasons that she gave that Mr W's complaint can be upheld.

As the adjudicator noted, the government had decided to allow individuals to contract out of SERPS by way of an appropriate personal pension. Actuaries employed by pension providers compared the projected benefits to decide whether contracting out would be beneficial. The rebates paid by the government meant that it was more attractive for younger people to contract out than for those who were older.

When Prudential advised Mr W to contract out it was generally accepted that men under the age of 45 who were earning more than £5,000 would be better off contracting out rather than remaining in SERPS.

Mr W was 36 and he was earning more than £5,000. So it was thought he would be better off by contracting out.

But it wasn't guaranteed that would be the case. That depended on the actual returns provided by the fund that the rebates were invested into and the rates at which the fund was turned into pension at retirement date (called annuity rates). Unfortunately actual investment returns have been much lower than expected. And lower annuity rates have meant that the expected gains from contracting out haven't materialised.

But I don't think it would be right to judge matters with the benefit of hindsight. At the time it was reasonable to assume that contracting out meant that there was a reasonable prospect that Mr W would get better benefits than he'd get from SERPS.

Mr W's said he wasn't prepared to take any risks. I think it's difficult to say, almost thirty years later, exactly what Mr W's attitude to risk would have been and what he may have been told about the risks involved in contracting out of SERPS. But I don't think it would have been considered a significant risk at the time. I note that contributions were invested in Prudential's with-profits fund – which would have been suitable for a low risk investor.

So, all in all I can't say that the advice to contract out of SERPS was unsuitable.

And I don't think that's affected by Mr W not joining his employer's pension scheme and the guarantee that Prudential gave. Mr W made an earlier complaint about whether the payment Prudential made under the guarantee was enough. I looked into that complaint but I decided that it wasn't something we could consider.

But I did see details of the occupational pension scheme Mr W could have joined. It wasn't contracted out of SERPS so any benefits payable were in addition to those paid under SERPS. And, because his employer's pension scheme was contracted in, I don't think that affects Mr W's complaint about being advised to contract out of SERPS.

my final decision

I don't uphold Mr W's complaint and I don't make any award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 4 November 2016.

Lesley Stead
ombudsman