

complaint

Mr A's complaint is that he received unsuitable advice from The Prudential Assurance Company Limited ("Prudential") in 1988, to contract-out of the State Earnings Related Pension Scheme ("SERPS").

background

The adjudicator who considered Mr A's complaint concluded that it should not be upheld. This was because she was not persuaded that the advice given to Mr A was unsuitable for his circumstances at the time. She said, in summary:

- Mr A's age at the time of the advice (31) was below Prudential's pivotal age of 45.
- Mr A's income of £12,000 a year was above the lower earnings limit at the time.
- At the time of the advice, there was a reasonable prospect that contracting-out of SERPS would have been more beneficial for Mr A than remaining contracted-in.

Mr A's representative did not agree with the adjudicator's findings. In summary, it made the following points:

- It considered that Mr A's attitude to risk, and whether he understood the risk associated with contracting-out of SERPS, was more important in assessing the suitability of the advice than a "*purely arithmetical calculation*" as to someone's age, annual income and the period until state pension age.
- Mr A's attitude to risk, and in particular his capacity to bear loss, was not considered.
- The fund Mr A's policy was invested in was inconsistent with his attitude to risk. It acknowledged that the unitised with-profits fund invested in was a low risk fund. However, it said Mr A only wished to be invested in areas where there was no risk of the value of his pension fund falling, so his attitude was "no risk".
- Mr A's recollection of the discussion at the time of the advice was that it was not explained to him that there was a risk that the policy with Prudential could have a shortfall compared to SERPS.
- It considered that the effect of commission and charges on Mr A's policy had not been identified.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

As the adjudicator explained in her assessment, when the Government decided to allow individuals to contract-out of SERPS, and offered incentives to encourage them to do so, it gave no guidance as to who should be advised to remain in SERPS and those for whom it was expected that contracting-out would be beneficial. So pension providers' actuaries carried out comparisons of the projected benefits from SERPS with those from an alternative personal pension arrangement. These calculations were based on what were felt to be conservative assumptions of likely future investment returns at the time. The rebates paid by the Government were set in such a way that it was more attractive for younger individuals to contract-out than those who were older.

At the time of the advice, Prudential's actuaries determined that the pivotal age for men was 45. Mr A was aged 31, so it was expected, based on the conservative assumptions used, that he would be better off contracting-out than remaining in SERPS.

As well as age, another factor that was used to determine whether someone was likely to be better off contracting-out of SERPS was the amount of their earnings. Mr A was employed and his gross earnings were £12,000 a year. This level of salary was significantly above the lower earnings limit to contract-out of SERPS and therefore supported the recommendation. That level of earnings was considered to be sufficient to ensure that the rebates forwarded by the Department of Social Security would cover the applicable policy charges (including commission payable).

Mr A's representative has commented that SERPS and its replacement, the State Second Pension, are effectively defined benefit schemes which are not dependent on investment return. It says, therefore, that although not absolutely guaranteed, these schemes involve little or no risk. The representative has said that Prudential's advice to Mr A to contract-out was not in keeping with his attitude to risk (which was not recorded at the time, but which it says, on reconstruction of Mr A's then circumstances, should be viewed as "no risk").

I understand the points made by Mr A's representative about the inherent risks of the transaction. However, Mr A contracted-out in 1988, and these matters should be considered in the light of what was considered reasonable at the time. Clearly, given that the policy was arranged a number of years ago, it is difficult for me to determine with any reasonable degree of certainty exactly what was said to Mr A; what information was provided and whether the risks were highlighted to him. However, I have not been persuaded that Mr A would have been likely to make a different decision, if he had been told that it was reasonably expected (on conservative assumptions), that he would likely be better off by contracting-out of SERPS, albeit there was some risk, as it was not guaranteed.

Whilst I accept that by remaining within SERPS, Mr A would not have exposed his eventual retirement provision to investment-linked risk, it would still have been susceptible to inflation-risk. That is the possibility that during periods of high inflation, the relative value of the eventual SERPS benefits might be degraded. So it is not entirely correct to imply that there were no risks associated with remaining contracted-in. In my opinion, at the time of the advice, a recommendation to invest in a with-profits fund would have been considered a relatively low-risk investment by a majority of suitability qualified advisers. This is particularly the case for an investor such as Mr A with nearly 35 years to state pension age. This meant that the fund had a considerable amount of time over which to grow.

I can understand that Mr A will be disappointed that the actual investment returns achieved by his policy have been lower than expected. But, given Mr A's circumstances and on the basis that the assumptions were considered to be reasonable at the time, contracting-out of SERPS would have appeared to provide a reasonable prospect of providing better benefits at retirement age.

Having considered the matter, for the reasons outlined above, I have not been persuaded that contracting-out of SERPS was unsuitable for Mr A given his circumstances at the time it was recommended.

my final decision

Accordingly, my final decision is that I do not uphold Mr A's complaint, and therefore I make no award.

Venetia Trayhurn
ombudsman