

## **complaint**

Ms F has complained about The Prudential Assurance Company Limited. It failed to set up her pension plan to contract out of SERPS as she wished.

## **background**

Prudential wrote to Ms F in 2014 telling her that it had made an error and she had not been contracted out of SERPS. But it explained that she had not suffered any loss because she was better off not having contracted out.

But Ms F complained in 2016. By then the state pension rules had changed and Ms F's personal circumstances mean that she is not likely to benefit from the state second pension. And so she will probably lose out because she will rely on the group personal pension which has not received the additional contributions.

Our adjudicator upheld the complaint for the following reasons, in summary:

- The crux of the issue is that the business failed to act on Ms F's instructions to contract her out of SERPS.
- The business said that Ms F has not suffered a financial loss because the state second pension is likely to be worth more compared to the position if the National Insurance rebates had been invested. However, Ms F told us that she had explicitly requested to be contracted out because she could've transferred a personal pension plan overseas. As she is living abroad permanently she may not be eligible to get a second state pension.
- The state pension rules mean that if the pensionable age is after April 2016 (as it is for Ms F) then at least 10 years of contributions is required to be eligible for a state pension and state second pension (and Ms F as less than 10).
- The U.K. does not have a reciprocal arrangement with the state where Ms F now works.
- This means that, on balance, Ms F is likely to forfeit all pension benefits she has accrued with the state (over seven years), unless she pays another three years into it – which she can't as she lives abroad.
- Therefore, in her opinion, it was fair and reasonable to assume that Ms F is likely to suffer a financial loss at retirement that should be rectified now.
- On this basis, she recommend that business endeavours, as best as possible, to put Ms F back into the position she would've been in now if her NI rebates from 6 April 2010 to 24 August 2011 had been contracted-out of SERPS. A safe-guard could be put in place to ensure that she doesn't benefit from a double payment.

The business disagreed with the adjudicator. It said that its calculation correctly showed that Ms F had not suffered a loss and it couldn't have known that the legislation would change.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I agree with the adjudicator. Prudential accepts that it has made a mistake. It calculated how to put things right and that calculation was accurate when it was first made in 2014. But the state pension rules changed in 2016 and now mean that Ms F may lose her state pension

benefits unless she makes additional NI contributions. She says that she won't, as she now lives and works abroad and does not intend to return to the UK.

If the contracted out NI contributions had been paid into the GPP plan then its value would have increased. Given Ms F's particular circumstances I think it would be fair if Prudential calculated her loss based on the difference in value of the GPP with or without the NI contributions. I don't think it's fair to calculate any loss by comparing the potential GPP return on the NI element with the value of the state second pension when Ms F is unlikely to receive it.

So to put things right Prudential should increase the current value of the GPP fund to the value it would now be if the contracted-out NI contributions had been received.

However, Prudential may take some safeguards to prevent any double recovery by Ms F. It is possible that UK state pension rules may change in her favour. It's also possible that she will make further NI contributions. So if by the time Ms F seeks to take the value of the GPP (at retirement or earlier by switching to another provider) her entitlement to a state second pension has changed, Prudential may recalculate to determine if there is any loss.

#### **my final decision**

I uphold this complaint about The Prudential Assurance Company Limited. It must put things right by taking the steps set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms F to accept or reject my decision before 16 March 2018.

Keith Taylor  
**ombudsman**