

complaint

Mr B's initial complaint to this Service was that he received unsuitable advice in 1989 to contract-out of the State Earnings Pension Scheme ("SERPS") and set up a personal pension plan with The Prudential Assurance Company Limited ("Prudential").

In addition, Mr B raised the following issues about his policy:

- Mr B was unaware that Prudential was receiving National Insurance contributions (NIC) on his behalf due to a lack of contact from the business over the last 12 years.
- Mr B has said that he called Prudential some 6 years ago to enquire about his pension, but was mistakenly told that Prudential had no record of him. Mr B had, therefore, assumed he no longer had a policy with Prudential, and it wasn't until a claims management company (CMC) called him in 2012 that he found that this was not the case.
- Mr B feels that Prudential had a duty of care to notify him that NIC rebates continued to be paid. Mr B has said that, in failing to do so, Prudential has been grossly negligent, at best, or fraudulent at worst.

After Mr B referred his complaint about the above issues to this Service, he made a separate complaint to Prudential about the charges applied to his policy. Mr B's contention was that he was not told about the charges at the time the policy was sold, and that had he been aware, he would have remained contracted into SERPS.

Prudential agreed it was best for this Service to consider both complaints simultaneously.

background

Our adjudicator wrote to Mr B with her assessment of his initial complaint in June 2013. The adjudicator did not consider that the complaint should be upheld.

In respect of Mr B's concerns about the suitability of the advice to contract-out of SERPS, the adjudicator's view was that when the recommendation was made in 1989, there was a reasonable prospect that Mr B would be better off contracting-out of SERPS.

The adjudicator considered that Mr B's complaint that Prudential was fraudulently receiving National Insurance contributions on his behalf for 12 years should not succeed. She explained:

- Mr B had signed the proposal form to contract out of SERPS in 1989, thus forming an agreement with, as was then, the Department for Social Security (DSS) to pay National Insurance rebates to Prudential. The DSS would automatically make these payments until Mr B instructed them to stop. Prudential was bound by law to accept the contributions and place them in Mr B's fund.
- Mr B was living in Italy in 1990 and 1991. As Mr B was not paying National Insurance during this time, the DSS would not have paid any contributions to Prudential; but payments would have resumed once Mr B returned to the UK and started working again. There was evidence that Prudential had explained this to Mr B in letters sent to his overseas address.
- It was likely then lack of contact from Prudential was because it did not have Mr B's correct address when he returned to the UK. The adjudicator considered it would have been Mr B's responsibility to notify Prudential of his new address. Had he at that

stage also wanted to opt back into SERPS, Mr B should have contacted the DSS and instructed them to stop payments to Prudential.

In addition, the adjudicator addressed Mr B's complaint that Prudential wrongly informed him in a telephone conversation that there was no record of his policy. The adjudicator considered that Mr B would reasonably have been expected to double-check this information with the DSS. She added that Prudential had in any case paid Mr B compensation of £150, which she considered was fair and reasonable redress for such an error.

The adjudicator also considered Mr B's concerns about the annual fees deducted from his policy. The adjudicator said that it was difficult to say with certainty what documentation was given to Mr B in 1989 in relation to his policy. She took the view that at the time the advice was given, the cost of the policy would not have been a major factor in the recommendation. She explained that this was because the pivotal age was the main factor used by policy providers to judge whether or not contracting out would be cost-effective.

Dissatisfied with the above assessment, Mr B reiterated his original points and added that:

- Prudential had, against his will, fraudulently deducted substantial payments from his NIC. He believed it was reasonable to expect Prudential to notify him when it restarted taking payments. Mr B suggested that Prudential should have liaised with the DSS to find out his correct address.
- Mr B enquired how it was possible that an unrelated third party business was able to get in touch with him and tell him about his pension but Prudential could not.

The adjudicator also considered Prudential's final response to the separate complaint about the policy charges. Mr B argued that Prudential had failed to demonstrate that he was told about the various charges deducted from his pension.

The adjudicator carried out another assessment in light of the further points raised. She remained of the view that the complaint should not be upheld and said that:

- Mr B's policy was set up to receive contributions from the DSS, and these would be made during any period of employment where NIC were paid. Prudential was obliged to keep the policy active in order to accept DSS payments.
- It is the responsibility of the policyholder to inform the business of a change of address. The point at which HMRC regulations require pension providers to trace policyholders is not until the policyholder is required by law to take retirement benefits. Prudential was in fact sending out statements to Mr B's old address until the yearly statement issued in April 2010 was returned as "gone away". Prudential said that it had carried a search on its Callcredit system but was unable to find Mr B. It wasn't until Prudential received a letter from a financial advisor representing Mr B that it managed to obtain his correct address.
- The adjudicator clarified that she considered that the £150 payment was fair and reasonable compensation in respect of the distress and inconvenience Mr B would have suffered as a result of being told that Prudential had no record of him in a telephone conversation.
- The adjudicator was unable to comment on how a third party was able to obtain Mr B's private details, but pointed out that this was a CMC which offered services in respect of claims for compensation, and was not related to his complaint about Prudential.

- The adjudicator reiterated that given the passage of time since Mr B was advised to contract out of SERPS, it was difficult to say what written documentation he may have been given outlining the charges applicable to his policy. The adjudicator said that, in 1989, it was standard industry practice for pension providers to send policy schedules to customers following approval of their application. She noted that in 1989 Prudential had Mr B's correct address and that Mr B had received correspondence from Prudential at that time. Therefore, on balance, the adjudicator considered it unlikely that Prudential would have deviated from its standard procedure by not sending Mr B his policy documents.
- In addition, the adjudicator explained that where a policy is brought to an end before the stated retirement date, either as result of retirement or fund transfer, a provider might apply a Market Value Reduction (MVR). She clarified that this calculation is designed to protect the interests of all policyholders, by ensuring that everyone receives the correct percentage of the underlying assets of the with-profits fund. The adjudicator took the view that as the MVR is only applicable on early vesting, the Prudential advisor would not have been expected to discuss this with Mr B when making the recommendation in 1989. Also, she opined that Prudential could not have foreseen that Mr B would not remain in the policy for its full term.

Mr B remained unhappy with the adjudicator's second assessment and felt that she had sided with Prudential. Mr B made the following comments:

- Mr B said it wasn't true that he had asked the DSS to make rebate payment into a Prudential pension scheme. At the time, there was Government pressure to get as many people as possible to contract out, and had the Government not applied pressure to contract out, he would not have done so.
- Prudential was applying management fees and commensurate with that was the responsibility to notify Mr B of his pension status every year. Mr B said he was angry that Prudential didn't contact him from the date he started with his current employer, 2002 onwards, to enquire about his previous 6 year period out of work. Mr B said that this should have triggered alarm bells to such an extent that Prudential should have contacted him to ensure he wanted NIC payments to resume.
- Mr B said that the adjudicator had sided with Prudential over its reported unsuccessful attempts to contact him. Mr B believed it would have been common sense for Prudential to contact the DSS to confirm his latest address, when it couldn't trace him on Callcredit. Mr B considered that this showed a complete breakdown in communication between two bodies he believed should have been working together.
- Mr B felt that the adjudicator had dismissed the misinformation he was given when he called Prudential at its offices in Reading. Mr B said that this incident was key, because not only did it demonstrate the incompetence and unprofessionalism of Prudential, but was the moment when the entire situation could have been resolved. Mr B had assumed, as a result of this incident, that his contract with Prudential no longer applied and that contributions would no longer be paid.
- Mr B also considered that the adjudicator had ignored the fact that he was contacted by a CMC who had managed to track him down and inform him that he had a pension fund with Prudential, whilst Prudential had incorrectly told Mr B it had no record of him. Mr B added that this raised the question of whether Prudential has acted illegally and in breach of Data Protection.
- At the time of contracting out, Mr B stated that he was not informed by Prudential about the full range of management fees that would be charged and there was no mention of MVR. Mr B said that neither this Service nor Prudential could provide documentary evidence that Mr B had willingly signed up to such a scheme. Mr B said

he would not have signed up with the Prudential, because no management fees would have been deducted from his pension had he remained in SERPS.

- Mr B believed that the adjudicator was mistaken to say that Prudential could not have foreseen that Mr B would not remain in the policy for its full term because, he said, the Government terminated the contracted out pensions from April 2012.
- Mr B also commented that he feels he has been vindicated by recent news that the Government is imposing a clampdown on companies charging policyholders excessive management fees.
- Mr B stated that he found it unforgivable for the adjudicator to have sided with Prudential, despite, he said, it being unable to provide hard and signed evidence. He considered that Prudential has acted fraudulently by violating his financial status, and at the very least it has been grossly negligent. Mr B said that two years ago this Service found in favour of another business, but asked that this time justice is done.

Prudential had nothing further to add.

my findings

I understand Mr B's strength of feeling about the matters he has raised. I would like to reassure him that the Financial Ombudsman Service is an independent body. We make what we believe is a fair and balanced decision on the individual facts and merits of each case.

I have carefully considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have arrived at the same conclusions as the adjudicator and for the same reasons.

On 4 April 1989, Mr B signed a form titled "*Application for Membership and Proposal for DSS Pension Benefit (Rebate Only)*". The declaration Mr B signed confirmed that he understood and agreed that:

"Contributions due from the DSS in respect of this proposal will be applied as Single Premiums to secure Pension Benefit on such dates as they are received by the Prudential."

As part of the same declaration, Mr B agreed that he had received a copy of the Personal Pension Product Guide, and that a copy of the scheme rules and provisions was available on request. Mr B would also have been issued an illustration dated 26 March 1989, which projected the pension benefits from DSS contributions. The illustration stated that it should be read in conjunction with the accompanying notes and the "Personal Pension Product Guide". Together, these documents comprised Mr B's pension contract.

I consider it was sufficiently clear from the above that Mr B was entering into a pension contract, whereby the DSS agreed to direct Mr B's NIC contributions to a rebate only pension plan. It follows that the DSS was obliged to do so for as long as Mr B was making National Insurance contributions, or until it was told otherwise by Mr B. Prudential was the nominated administrator of the policy, and as such was bound to accept the rebate payments on Mr B's behalf.

The purpose of this pension contract was to secure pension benefits for Mr B. Therefore, it ought to have been reasonably clear from the outset that the policy was intended to be a long-term investment vehicle until Mr B's retirement – as is invariably the case with any pension contract. If at any point after entering the agreement, Mr B decided to stop

contributing into his rebate-only pension plan; the onus would have been on him to instruct the DSS accordingly.

Likewise, Mr B as the policyholder would also have been expected to keep Prudential up-to-date with any changes in his circumstances, such as his employment status and residential address. I have seen copies of correspondence between Prudential and Mr B while Mr B resided overseas. In its letters, Prudential suggested that Mr B contact the DSS for information about his contributions, and also that he should contact Prudential when he returns to the UK. These letters demonstrate that Prudential was actively communicating with Mr B for the time that it held his correct contact details. However, the trail appears to go cold on Mr B's return to the UK. As Prudential was not notified of Mr B's change of address, I am unable to conclude that it acted unreasonably. The evidence suggests that Prudential became aware that it held an inaccurate address for Mr B when the yearly statement issued in April 2010 was returned as "gone away".

I have noted that Mr B has said on a number of occasions that Prudential should have liaised with HMRC in order to track down his correct address. Where it becomes apparent that a policyholder is no longer at the address held on file, Prudential would be required to take reasonable steps to trace the policyholder. It appears that Prudential did so by running a check on its Callcredit system, but was unable to find Mr B. I would not have expected Prudential to liaise with HMRC until legislation required Mr B to take his pension benefits at age 75. Only then, if they were unable to contact Mr B, would I expect Prudential to take further steps, over and above using its Callcredit system, to establish Mr B's whereabouts.

I do not share Mr B's view that Prudential could have foreseen that he would not remain in the policy for its full term. It was not foreseeable in 1989 that the Government would abolish contracting-out of SERPS (or Second State Pension) in 2012. By the same token, Prudential would not have been expected at the time the advice was given to flag up the possibility of market value reduction being applied to Mr B's policy because, as I have said, the assumption was that the policy would run its full term.

I have only been able to consider Mr B's account of the phone call Mr B says is the key to this complaint, in which he was incorrectly told that Prudential had no record of his policy. There is no contemporaneous record or recording of the call held by either party to it.

Whilst doubtless confusing to be told that Prudential had no record of his policy, I consider that a reasonable response would have been for Mr B to query this either directly with Prudential or with the DSS; he had, after all, opened the policy in 1989, was aware from statements he did receive prior to moving abroad that it was being funded and had not cancelled the policy. He should therefore have been aware that the information given to him in his call to Prudential was not accurate. I am not persuaded that a reasonable response was for Mr B to take this information at face value and not pursue the matter further.

In any event, I note that Prudential has awarded Mr B £250 compensation for this administrative error. This is a fair and reasonable amount in recognition of such an error and is at the upper end of an award this service might order in similar circumstances.

my final decision

I do not uphold this complaint.

Terry Connor
ombudsman