

## **complaint**

Mr A complains that he was wrongly advised by The Prudential Assurance Company Limited (“Prudential”) to contract-out of the State Earnings Related Pension Scheme (“SERPS”).

## **background**

The adjudicator who investigated Mr A’s complaint concluded that it should not be upheld. The adjudicator set out the background and circumstances in his assessment of the case. He reached the view that the advice Mr A received to contract-out of SERPS was suitable at the time, because, in summary:

- Mr A was 29 years old when he contracted-out (backdated to age 27) and was below Prudential’s pivotal age for men (age 45). The adjudicator therefore considered that there was a sufficient period of time to Mr A’s retirement age for investment growth.
- Mr A’s annual earnings at the time were approximately £22,000; exceeding the level of earnings Prudential had calculated was sufficient to justify the advice (£5,000).
- It was made sufficiently clear that the retirement benefits from the contracted-out personal pension depended upon investment returns which were not guaranteed.

Mr A disagreed with the adjudicator’s conclusions and requested that the complaint be reviewed by an ombudsman. He said, in summary:

- When he was sold the policy he was only given the option to contract-out of SERPS through Prudential, and was not offered other options that might have been better.
- He was unhappy with the way he was provided with advice – saying this was “forced” on him and other employees.

## **my findings**

I have 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 come to the same conclusions as the adjudicator, and for the same reasons.

I understand that Mr A feels that his complaint has not been fully understood, because his main concerns are around the way in which Prudential sold the policy to him. These concerns are that the policy was ‘sold’ to him and a number of other employees as part of a group exercise, with the Prudential representative coming into the office in which he then worked. He was working for one of Prudential’s group companies at the time. He feels that employees were pressured into signing up, and were not properly or individually advised. He is also unhappy that no alternatives were offered or advice provided to consider other options than the Prudential policy.

In the absence of contemporaneous documentary evidence, it is difficult to say with any certainty now, over 20 years later, whether any pressure was applied to Mr A during the meeting with the Prudential representative in 1989. That is not to say that I doubt Mr A’s testimony, but rather that I am unable to make a finding on this aspect now, in the absence of any other evidence and given the passage of time. Mr A has said that seeking out staffing records would show that everyone in each office was signed up on the same day. However, I do not agree that obtaining this information would, in itself, prove that there was anything improper in the sales process.

As the adjudicator explained, this service's approach in these circumstances is to look at whether the advice to start the pension was suitable at the time. Having considered the relevant facts in Mr A's case, I agree with the adjudicator's view that in 1989 Mr A met the criteria in order to be eligible to contract-out of SERPS.

When the Government decided to allow individuals to contract-out of SERPS by way of an Appropriate Personal Pension ("APP") policy, no advice was given as to which individuals should be advised to remain in SERPS and those for whom it was expected that contracting-out would be beneficial. Pension providers' actuaries carried out comparisons of the projected benefits from SERPS with those from the APP policy. These calculations were based on what were felt to be conservative assumptions of likely future investment returns. 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 and who were advised to remain in SERPS. The ages, where the provider's advice as to whether to contract-out or not changed, were called "pivotal ages".

The main factors that were used to determine whether someone was likely to be better off contracting-out of SERPS were someone's age (and therefore the length of the period to retirement date) and their earnings. Mr A was under the pivotal age at the time that he contracted-out. Further, his earnings, and therefore the single contributions that were paid into the plan, were sufficient to offset the effect of the plan's charges. On the conservative assumptions used at the time of the advice, it was therefore anticipated that Mr A would be better off on retirement having contracted-out of SERPS.

Mr A contracted-out with effect from 1987 and his complaint should be considered in the light of what was considered reasonable at the time. I can understand that Mr A may be disappointed that the actual investment returns from his contracted-out pension plan 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.

Accordingly, having carefully considered all the circumstances at the time, I have not been persuaded that the advice to contract-out was unsuitable.

With regard to Mr A's complaint that he was not offered alternative options to the Prudential APP policy, or told to seek advice about other providers' APP policies, it is difficult to say now whether that would have made a difference to Mr A's decision. On balance, I do not think that Mr A would have chosen an alternative arrangement at the time. I find it more likely than not that Mr A would still have signed up for the Prudential policy. I also cannot now apply hindsight to determine whether he would have been better off with an alternative provider's APP policy, based on the investment returns actually achieved in other providers' funds.

### **my final decision**

I am unable to uphold Mr A's complaint and therefore make no award.

Venetia Trayhurn  
**ombudsman**