

complaint

Mr C is unhappy with the transfer value he received when he transferred his personal pension plan with The Prudential Assurance Company Limited (Prudential) to his employer's pension scheme. He is also unhappy with Prudential's customer service – Prudential initially said that it had lost all the documents relating to his policy.

background

Mr C contracted-out of SERPS (state earnings related pension scheme) in 1989 through a personal pension plan.

- Mr C was below Prudential's pivotal age of 45
- his recorded earnings exceeded the relevant lower earnings limit
- Mr C made monthly contributions of £57 into the plan between May 1991 and February 1994
- the policy was transferred out in August 1994 to his employer's pension scheme with a transfer value of £3,993.89.

Mr C has said that he believes that he had been making personal contributions into the personal pension plan before contracting-out of SERPS. Prudential has not found any record that suggests that this is the case. In addition, Mr C says that Prudential did not fully invest the rebates received from HMRC and so the transfer value paid was incorrect.

Prudential partially upheld Mr C's complaint. It:

- apologised for the delays in locating Mr C's documents relating to the policy and offered £200 in recognition of this
- reviewed the information and concluded that the advice to contract-out of SERPS was suitable for Mr C's circumstances
- was unable to locate any information to suggest Mr C was contributing into the plan before 1989
- acknowledged that the rebate of £413.64 for tax year 1993-1994 was left in its system until 1997 – it should have been transferred to Mr C's employer's pension scheme in 1994
- offered to pay the difference between £413.64 and what that rebate would have been worth had it been transferred in August 1994
- offered an additional £150 in recognition of the error

One of our adjudicators investigated the complaint. She concluded that overall Prudential's offer put Mr C back into the position he would have been in had errors not occurred.

In summary she said:

- the advice to contract-out of SERPS was suitable
- the £200 offered for poor customer service is fair and reasonable
- although there was a delay in sending the rebate to Mr C's employer's pension scheme the offer to pay the difference would put Mr C back into the position in which he would have been and the £150 offered is fair and reasonable
- she could not find any documents to suggest that Mr C made contributions into a personal pension plan prior to contracting-out of SERPS.

Mr C did not accept the adjudicator's findings. He said:

- the offer is not reflective of his financial loss
- Prudential should have proactively chased HMRC for the late rebate payments
- he has no confidence in Prudential's record keeping – its failure to locate the documents in the first place suggests that they may have evidence to show contributions were made before contracting-out of SERPS
- he was not aware of the charges applicable on his Prudential pension plan

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, when the government decided to allow individuals to contract-out of SERPS, and offered incentives to encourage them to do so, it gave no advice 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 were paid by the government in such a way that it was more attractive for younger individuals to contract-out than those who were older - the ages, where the provider's advice as to whether to contract out or not changed, were called pivotal ages.

Prudential's actuaries determined that, at that time, the pivotal age for men was 45. This meant that it was anticipated that men aged below 45 would be better off contracting-out rather than remaining in SERPS. As Mr C was well below this age it was expected that he would be better off contracting-out.

As well as age, other factors, including earnings, were taken into account to determine whether someone was likely to be better off by contracting-out of SERPS. Mr C's annual earnings were above the lower earnings limit then applicable.

So, at the time, it was anticipated that Mr C would likely be better off at retirement by contracting-out of SERPS. However it was not guaranteed that he would be, as the eventual benefit would depend on actual investment returns and the rates at which Mr C's fund would be converted into a pension at retirement (that is, the annuity rates applicable at that time).

Mr C has said he was not made aware of the charges applicable to the plan. Given the time elapsed, it is difficult now to say with any certainty what Mr C was told about charges when he took out the policy. But the literature provided at the time outlined the charges applicable to the plan so it seems to me not unreasonable to conclude that Mr C was given information about the charges that would apply.

I appreciate why Mr C feels Prudential's credibility is questionable – given that it could not initially locate the documents for the SERPS policy. And I acknowledge that Prudential should have found the documents when Mr C made a complaint to them. But Prudential has offered £200 in recognition of its failure to do so which I think is fair and reasonable.

And I can see why Mr C considers that in the circumstances I should accept that he did make contributions to the policy before he contracted out of SERPS. But I don't think that automatically follows. Where, as here, what happened is not agreed, I reach my conclusions on the balance of probabilities, that is, what I consider is more likely to have happened, taking into account all the available evidence.

So I have noted what Mr C recalls and borne in mind that Prudential's record keeping might be lacking. But under a subject access request made by Mr C, Prudential was legally required to provide all personal information it held. And, having looked at that information, which Mr C has provided, I haven't seen anything to suggest that Mr C contributed into a pension plan before contracting-out of SERPS. So I am unable to conclude that such contributions were made.

It is undoubtedly frustrating for Mr C that there have been delays in HMRC sending the rebates to Prudential. Although Mr C believes the responsibility lies with Prudential to ensure the rebates were received on time, I think responsibility rests more with HMRC. Prudential is largely dependent on HMRC sending the rebate payments on time. Policyholders can decide to contract out with another provider or through an employer's pension scheme, so Prudential would not necessarily expect a rebate every year until the policyholder retires.

I have looked at the rebate record provided by both HMRC and Prudential. Both of the records show the correct amount of rebate apart from the £413.64 for tax year 1993-1994. Prudential has acknowledged that it overlooked sending that rebate to Mr C's employer's pension scheme. The rebate was not sent until January 1997. As a result, Prudential has offered to see how much the contribution of £413.64 would be worth had it been received in August 1994. Once this is calculated, they will pay the difference (either through an enhancement or a cash payment).

It is at the discretion of the employer's pension scheme to decide if they will accept the enhanced payment – I am unable to compel that scheme to accept the payment. But I think it will put Mr C back (or as close as possible) into the position he would have been in, had the rebate been sent to his employer's pension scheme promptly in August 1994.

my final decision

I uphold Mr C's complaint. The Prudential Assurance Company Limited must:

- 1) carry out a loss assessment to see how much the contribution of £413.64 would be worth had it been received on the 30 August 1994 as opposed to 16 January 1997 and pay the difference either by way of a cash payment to Mr C or an enhancement (if permitted) to his employer's pension scheme.
- 2) pay £350 in recognition of the inconvenience this matter has caused to Mr C.

Lesley Stead
ombudsman