

complaint

Mr A complains that in 1988 he received unsuitable advice from The Royal London Mutual Insurance Society Limited (now Phoenix Life Limited) to contract-out of the State Earnings Related Pension Scheme (SERPS).

background

Mr A was advised to invest into a personal pension policy and opt out of SERPS in 1988. At the time he was 19 years old, employed and earning approximately £5,200 per year. He complained about the advice in 2013 saying that he did not feel it was suitable for him. Phoenix Life did not uphold the complaint

The complaint was investigated by one of our adjudicators. He concluded that the complaint should not be upheld. He said, in summary:

- Mr A's age was well below the firm's pivotal age of 45.
- Mr A's earnings per annum were above the lower earnings limit at that time.
- Returns from the pension were not guaranteed.
- At the time of the advice there was a reasonable prospect that contracting-out of SERPS could have been beneficial to Mr A.

Mr A did not agree with the adjudicator's assessment and asked for the case to be referred to an Ombudsman for a final decision on the matter.

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.

As the adjudicator explained in his 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 advice as to who should be advised to remain in SERPS and 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 - the ages, where the provider's advice as to whether to contract out or not changed, were called pivotal ages.

Phoenix Life's actuaries determined that the pivotal age for men was 45. This meant that it was anticipated, on the regulator approved investment growth assumptions used, that men aged below 45 would be better off contracting-out rather than remaining in SERPS. Mr A was well below this age at the time. However it was not guaranteed that contracting-out would always remain beneficial as it depended on the actual returns provided by the fund the rebates were invested into and the rates at which the fund was turned into pension at retirement date.

As well as age, another factor that was used to determine whether someone was likely to be better off contracting out of SERPS was their earnings. Mr A's annual earnings recorded at the time of the advice were considered to be sufficient to ensure that the rebates forwarded by the Department of Social Security ("DSS") would cover the applicable charges. In addition, at the time the advice was given, Mr A did not appear to be a member of, or have access to, an occupational pension scheme. He had no other pension provision and thus met another of the criteria by which contracting out was deemed an appropriate course of action.

So, at the time, it was anticipated that Mr A would be likely to be better off at retirement by contracting out of SERPS. The investment returns achieved by the underlying fund have been much lower than would have been reasonably expected at the time of advice. When combined with the lower annuity rates now available to convert funds into pension income this has meant that the expected gains from contracting out have not arisen. However, this is seen with the benefit of hindsight.

I appreciate that Mr A is disappointed that the investment returns from his pension plan have been lower than expected. But given Mr A's circumstances at the time, I am satisfied that contracting-out of SERPS would have appeared to provide a reasonable prospect of providing better benefits at retirement age.

So I have not been persuaded that investing in a personal pension plan, and contracting-out of SERPS was unsuitable for Mr A given his circumstances at the time of the advice.

my final decision

For the reasons given, I do not uphold the complaint.

John Pattinson
ombudsman