

complaint

Mr I has complained that The Prudential Assurance Company Limited (Prudential) acted incorrectly by contracting him out of the State Earnings Related Pension Scheme (SERPS) in 1988.

background

In 1988 Mr I met with Prudential and it advised him to contract out of SERPS and take out a personal pension.

Recently Mr I has complained about the advice he was given. Prudential looked into his complaint and upheld it because Mr I hadn't met the minimum earnings thresholds in the years after contracting out for it to be beneficial for him.

Mr I had already taken his benefits from his Prudential plan, so Prudential said it couldn't reinstate the money into SERPS. So instead it carried out a loss calculation which it said would put him in the position he would've been in had he not contracted out. This was paid to Mr I.

Mr I was unhappy with this because after seeing the application form completed in 1988 he believed that someone at Prudential had changed what he'd put on the forms – so that it appeared that he earned more than he actually did. And Mr I has also said that he felt he'd lost out because he'd not made extra pension contributions because he'd not known until recently that anything was wrong.

Mr I complained to Prudential about what he felt was 'fraud' committed by Prudential – and he was also very unhappy with Prudential's responses to his complaints. He felt it hadn't answered his concerns and he was unhappy with the time taken to reply.

Prudential agreed that it hadn't dealt with Mr I's complaint well or in a timely manner and paid Mr I £1,000 for this.

Our investigator looked at the complaint and said that the offer Prudential had made to redress Mr I was fair.

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 know that Mr I feels very passionately about his complaint and he is angry at what he perceives as 'fraud' in regards to the amendments made to his application form and wants this to be looked into.

But our role at this service, if we think a business has done something wrong, is to put the consumer back in the position they would've been in if the error hadn't occurred.

It is not within our powers or remit to fine or punish businesses for errors or mal-practice. That is the role of the regulator.

So looking into the 'fraud' accusations isn't something I need to do here because Prudential has already accepted that Mr I shouldn't have been contracted out of SERPS - as his subsequent earnings didn't meet the minimum thresholds. And it's carried out a loss calculation, which it says will put him in the position he would've been if this hadn't occurred.

Whilst I understand why Mr I will be disappointed that the focus of my decision isn't on the amendments to the application form – in terms of any potential loss suffered, why and how Mr I was contracted out of SERPS doesn't make any material difference.

But what I do need to decide is whether or not Prudential's offer has put Mr I back in the position he would've been in if Mr I hadn't been contracted out of SERPS.

The need to do a loss calculation for being contracted out of SERPS is a common occurrence. And so there is an established methodology and approach for working out the loss. I can see that Prudential employed professional actuaries to carry out this calculation. And having looked at the loss calculation, I've not seen anything that leads me to believe that it hasn't been carried out correctly. Therefore I'm satisfied that it does put Mr I back into the position he would've been in.

Mr I doesn't agree. He says that when he met with Prudential it was with the intention to take out a personal pension and make his own contributions. But he says he was told just to contract out after questioning whether he needed to make contributions and contract out. Mr I also said that going forward Prudential didn't tell him his contracted out plan wasn't receiving the contributions expected – and so without this knowledge he didn't make additional pension contributions that he would've otherwise have done.

Prudential says that the recommendation was to set up a personal contribution alongside contracting-out and its records show that it did try and collect the premium – although this was unsuccessful. Prudential said it sent Mr I statements up until the point it was notified that Mr I was no longer at his address – it did attempt to trace him. And it was Mr I's responsibility to keep it updated with his address.

Mr I's point is that he hasn't now got the pension that he would've had, had he made his own pension contributions. But I don't think it would be reasonable to base 30 years plus of retirement planning on what was discussed in a one off sale – with a Prudential representative who was only able advising Mr I on these Prudential products. This wasn't a meeting with an independent financial adviser who potentially could've had an ongoing responsibility and working relationship with a client.

And the paperwork does show that the adviser recommended that Mr I did make his own contributions. In any event, even if Mr I was told not to take out a personal pension and that contracting out would be sufficient, there was plenty of time for Mr I to reconsider this as the advice was given in 1988 and he's still not yet reached age 60.

If Mr I wasn't receiving statements or didn't know how the pension was performing; he could've contacted Prudential to find out. And if Mr I wanted to make additional pension contributions with Prudential or another provider he could've done so. Ultimately the responsibility for his retirement provision was Mr I's and I don't think anything that did or didn't happen in a one off event in 1988, can reasonably be seen to be responsible for any lack of pension provision that Mr I might have now.

Mr I has also said that he's lost out because the calculation only takes into account the years where contributions were paid into the Prudential plan. And so he's lost out on the second pension (SERPS) that he would've had. However, being contracted out of SERPS just redirects the contributions that would've gone into SERPS into a personal pension. So for those years where the earnings weren't high enough for any contribution to be made – the same would've applied had Mr I still been in SERPS. So Mr I hasn't lost out here. I hope that this will put his mind at rest that the loss calculation has put him back into the position he would've been in had he not been contracted out.

So in conclusion I think the loss calculation that Prudential has made does put Mr I back as closely as can be into the position he would've been in had he not contracted out.

Prudential has also paid £1,000 for the delays and way in which it dealt with Mr I's complaint and considering our guidelines for awards, I don't think any further award would be reasonable.

my final decision

For the reasons explained above I don't uphold Mr I's complaint and make no further award.

This is on the understanding that Prudential has already paid Mr I the redress it offered. If it has not done so, it should do so now.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 9 November 2018.

Simon Hollingshead
ombudsman