

complaint

Miss B is unhappy that she was advised to contract out of the State Earnings Related Pension Scheme (SERPS) by the Prudential Assurance Company Limited. She is also concerned that her signature may have been forged on a disclaimer form used to support her application to contract out.

background

Miss B contracted out of SERPS in January 1989 when she was 25 years old and earning £4,500. She took out a personal pension plan with Prudential. She stopped making contributions to her personal pension in May 2000, when she was 36 years old. Miss B took the benefits from her personal pension in March 2019 at age 55, as a lump sum.

At the time of contracting out, Miss B's annual earnings were £500 less than the minimum salary required by Prudential's guidelines to be considered suitable for contracting out. Notes provided by Prudential suggest that Miss B told Prudential's representative that her earnings would increase by £500 in the following year. Miss B disputes this. Prudential's notes also indicate that Miss B still wanted to contract out of SERPS. So she was invited to sign a disclaimer form which confirmed that Miss B was aware that her pension could be lower by contracting out, but she still wished to do so. Miss B says that her signature was forged on this disclaimer form.

Miss B believes that she has been incorrectly advised to contract out of SERPS and complained to Prudential. She also made Prudential aware of her concerns about the potential forging of her signature on the disclaimer form.

In its response, Prudential said it didn't have proof that Miss B's signature had been forged on the disclaimer form. Nor did it believe the policy had been mis-sold. But it did accept that, although there was a signed disclaimer, Miss B's earnings were below the minimum required by Prudential's guidelines. Prudential said that not meeting the salary requirement whilst having a signed disclaimer wouldn't be grounds to uphold Miss B's complaint. However, given that there is a dispute about the disclaimer, Prudential looked at the case as if there wasn't a disclaimer. And without the disclaimer it would have upheld the complaint. As a result, it offered a goodwill gesture to try and contract Miss B back into the state pension scheme. This would put her back to the position she would have been in, had she not contracted out of SERPS. Miss B declined this offer.

Miss B says that she has been considerably distressed and upset by what she believes is Prudential forging her signature on the disclaimer form. Prudential said that, whilst it didn't have any evidence that Miss B's signature was forged on the disclaimer form, it acknowledged that the issue was distressing to Miss B. It has offered £100 in recognition of the upset Miss B had suffered. Miss B didn't accept this payment.

Miss B remained unhappy and complained to us. Our investigator didn't uphold Miss B's complaint. He concluded that:

- The disclaimer was only one part of the application process. In order to continue the application to contract out, the disclaimer form had to be signed. As Miss B had made it clear that she wanted to contract out of SERPS, our investigator considered that Miss B was most likely to have signed the disclaimer form.

- One of the benefits of contracting out of SERPS was the option for Miss B to take her benefits as a cash lump sum and earlier than state retirement age, which Miss B has done. She wouldn't have been able to do this had she remained in SERPS.
- The advice to contract out was suitable in Miss B's circumstances.
- Because Miss B had taken benefits from her plan, Prudential's offer to reinstate Miss B into the state pension scheme would no longer be possible.

Miss B didn't agree with our investigator's findings and asked for an ombudsman to review her case. It has now come to me for a decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

It's worth noting that we are an informal dispute resolution service, acting as an alternative to the courts. We don't consider complaints on the burden of proof, as a court might. Where the evidence is incomplete, inconclusive or contradictory, decisions are reached on the balance of probabilities. In other words, what is most likely to have happened in light of the available evidence and the wider circumstances. I should also say that that our service isn't the industry regulator; our role isn't to make rules for financial businesses, punish or fine them, or direct them to change their processes.

When the Government decided to allow individuals to contract out of SERPS (and offered incentives to do so), it didn't give advice about who should be advised to remain in SERPS and those for whom it was anticipated that contracting out would be beneficial. To provide clarity, pension providers made comparisons of the projected benefits from SERPS with those from a personal pension. These calculations were based on what were felt to be conservative assumptions of likely future investment returns at the time. In drawing up these comparisons, two key criteria were considered; age, and earnings.

One of the attractions of contracting out of SERPS at an early age is that the younger someone is, the longer there is until retirement. So there is a greater chance that a personal pension could perform better than SERPS over this longer period. The age, where the provider's advice as to whether to contract out or not changed, is known as the 'pivotal age'. Miss B was 25 years old when she contracted out and was under Prudential's pivotal age. Miss B's annual earnings were £500 less than Prudential's guidelines for contracting out. Despite this, Miss B still had the option of contracting out of SERPS by signing a disclaimer. This highlighted that Prudential would be prepared to accept Miss B's application (although she was just outside Prudential's guidelines) so long as she accepted that her total pension may be lower. This appears to be signed by Miss B. But she is adamant she didn't sign the disclaimer form and her signature has been forged. Miss B says another reason for her to believe the signature is forged is that the form was signed on a different date from that on the application form. Prudential says its representative would have had to revisit Miss B as it was something that couldn't have been signed at the same time as the application form. I think this sounds plausible.

I wasn't present when the disclaimer form was signed so I can't be certain whether Miss B's signature was forged. Nor am I a handwriting expert; and this service doesn't have access to the forensic expertise needed to determine if a signature has been forged. So, although Miss B is convinced her signature has been forged, I'm not able to determine whether it has. I'm conscious that Miss B feels very strongly about this issue. So much so

that she is considering employing a handwriting expert to assess whether her signature was forged on the disclaimer form. Whilst this is for Miss B to decide, whether the signature was forged or not doesn't alter my decision. Let me explain why.

If the signature had been forged, I considered whether this resulted in any disadvantage to Miss B. I thought about this in the context of her long-term plans. Miss B says her planning was based around taking the benefits from her personal pension as a lump sum. This is so that she could relocate for her retirement. Contracting out has been beneficial to Miss B for two main reasons. First, she has been able to take the benefits as a cash lump sum; she wouldn't have been able to do this had she remained contracted in to SERPS. Second, she was able to take her benefits at age 55. This would not have been possible had Miss B remained contracted in to SERPS; she would have had to wait until the state pension age to take her benefits.

Whilst contracting out of SERPS has been advantageous to Miss B, I can understand and sympathise with her sense of injustice as she is convinced that her signature on the disclaimer form has been forged. I accept how strongly she feels about this. Prudential hasn't seen any evidence that Miss B's signature had been forged, but has accepted that the issue has caused distress to Miss B. In these circumstances, without evidence of forgery I think Prudential's suggested £100 payment in recognition of this upset is fair and reasonable.

Even if the signature has been forged (and I haven't seen any evidence that it has) it isn't our role to punish a business for a criminal offence. We'd ask Prudential to put Miss B back into the position she would be in had she remained in SERPS. I can see that Prudential offered to do this – which I think is fair and reasonable. Since the offer was made, Miss B has taken her benefits as a lump sum, so reinstating her benefits in SERPS (or Second State Pension as it's now known) isn't possible. But even if it was, I don't think this is what Miss B would have wanted as it would mean she couldn't access the SERPS part of her pension as a lump sum and not before her state retirement age.

my final decision

My final decision is that I don't uphold Miss B's complaint. If it hasn't already done so The Prudential Assurance Company Limited should pay the £100 it offered to Miss B. It doesn't have to do anything else.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 9 April 2020.

Geoff Pearson
ombudsman