

complaint

Mrs A has complained that she received unsuitable advice from The Prudential Assurance Company Limited (“Prudential”) in 1989 to contract-out of the State Earnings Related Pension Scheme (“SERPS”).

background

One of our adjudicators investigated Mrs A’s complaint, who concluded that the complaint should not be upheld. This was because:

- Mrs A was aged 34 at the date she was backdated to contract-out and below Prudential’s pivotal age for women (age 35).
- Mrs A’s annual earnings were approximately £9,500 and thus exceeded the ‘lower earnings limit’ at the time.
- The retirement benefits from the contracted-out personal pension depended upon investment returns, which were not guaranteed.

The adjudicator therefore considered the advice to contract-out of SERPS was not unsuitable given Mrs A’s circumstances at the time.

Mrs A did not agree with the adjudicator’s view. In summary, she made the following points:

- She was nine days away from her 35th birthday and therefore close to the pivotal age at the time of contracting-out.
- Prudential did not give her sufficient advice as she was not made aware that she could have been worse off by contracting-out of SERPS.
- She was given insufficient information and/or explanation and therefore could not make an informed decision about the potential for loss.
- There was no discussion about her age, she was just told she ‘*could not lose*’.
- She was not told that she could be advised to opt back into SERPS in a few years; if this had been discussed she most likely would not have contracted out.

Prudential made no further comments.

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 reached the same conclusions as the adjudicator, and largely for the same reasons.

I understand why Mrs A is unhappy with the situation if the amount of pension she would get is less than what she would have been paid from SERPS at state pension age. However, although she may be receiving less, this does not necessarily mean that the policy was mis-sold. These matters have to be considered in light of what was considered reasonable at the time that the advice was given.

As the adjudicator explained in her assessment, when the government decided to allow individuals to contract-out of SERPS it offered incentives to encourage them to do so. There was no advice given as to who should be advised to remain in SERPS and those for whom it was expected that contracting out would be beneficial.

Instead, 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, were called pivotal ages. There was also a lower earnings limit which was used to determine whether an applicant's earnings would be sufficient to benefit from contracting out.

At the time of the advice, Prudential's actuaries had determined that the pivotal age for women was 35. This meant that it was anticipated, on the assumptions used, that women aged 35 or below would be better off contracting-out rather than remaining in SERPS. Mrs A was aged 34 at the time that the contracting-out was backdated to, in 1987.

I appreciate though that Mrs A contends that as the backdated contracting out date was only 9 days away from her 35th birthday, the pivotal age 'cut off' was so imminent that she should have been deemed unsuitable to contract out. However, I do not agree; the pivotal age was fixed to a particular age and individuals either fell below or above that fixed date with no scope for flexibility. Hence, the imminence of Mrs A's 35th birthday did not influence the fact that she was below the pivotal age.

Mrs A's earnings were £9,500 per annum. This level of salary was above the lower earnings limit to contract-out of SERPS and therefore supported the recommendation.

Accordingly, at the time, it was anticipated that Mrs A would likely be better off at retirement by contracting-out of SERPS. Given that Mrs A met the necessary criteria and considering the market conditions at the time I do not doubt Mrs A's sincerity in asserting that she was told she '*could not lose*'. However, it would be neither fair nor reasonable to uphold this complaint solely on the basis of an unsubstantiated assertion which in any event did not constitute a *guarantee* of higher returns by contracting-out. It could not be guaranteed that Mrs A would be better off, as this depended on the actual returns provided by the fund the money was invested into and the rates at which Mrs A's fund would be converted into a pension at retirement.

I note that Mrs A has said that she wasn't made aware that she could be worse off by contracting out of SERPS. In my opinion though, it is more likely than not that Mrs A would have been provided with literature outlining that the benefits depended on the factors outlined above and confirming their investment return was not guaranteed.

I note that in the application form to contract- out, which Mrs A signed, she confirmed that she had received a copy of the Personal Pension Product Guide. This confirmed that '*The scheme is entitled to receive a share of the profits...in the form of a bonus. The determination of the total profit and the distribution among participating policyholders and shareholders will be determined by the company*'.

I also note that in the personal illustration provided to Mrs A, it said that '*In order to provide an indication of the **possible** (my highlight) benefits.....*' and continued '*...and a comparison between the **possible** (my highlight) benefit under your policy and the SERPS benefit you will be giving up....*' The illustration continued '*...The two amounts do not represent the upper and lower limits of the **possible** (my highlight) benefit. The actual comparison with the*

SERPS benefit given up will be affected by the bonuses added to the policy, the terms ruling at the date of retirement for converting cash into annuity and future increases in national average earnings'.

In other words, there were no guarantees that contracting out of SERPS would lead to inevitably higher pension income at retirement. I appreciate that the wording set out above in both documents was not prominently displayed; however, the disclosure rules prevailing at the time were rather less onerous than those that apply today. This though does not negate the fact that Mrs A was informed that returns were not guaranteed and subject to a number of factors, none of which could be predicted with certainty.

Mrs A contracted-out in 1987 and the suitability of the advice must be considered in the light of what was considered reasonable at the time. I can understand that Mrs A is disappointed that the actual investment returns achieved by her contracted-out pension plan have been lower than expected. However, given Mrs A's circumstances and on the basis that the assumptions were considered to be reasonable at the time, contracting-out of SERPS appeared to provide a reasonable prospect of providing better benefits at retirement age.

That the anticipated higher investment returns and hence better retirement benefits for Mrs A at retirement have not actually transpired can only be judged with the benefit of hindsight.

I note Mrs A's comments regarding opting back into SERPS. It appears Prudential advised her to do so given the altered circumstances in 1995, i.e. the actual returns being lower combined with Mrs A's then length to retirement etc. This though does not of itself mean the advice in 1989 to contract out of SERPS was unsuitable as Mrs A's circumstances were different at that time.

I understand that Mrs A will be disappointed with my decision. However, for the reasons set out above, I am not persuaded by the evidence I have seen that contracting-out of SERPS was unsuitable for Mrs A given her circumstances at the time it was recommended.

my final decision

I do not uphold Mrs A's complaint against The Prudential Assurance Company Limited.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs A to accept or reject my decision before 13 February 2015.

Terry Connor
ombudsman