

Ombudsman's Determination

Applicant	Mr B
Scheme	Elementis Group Pension Scheme (the Scheme)
Respondents	Harrisons & Crosfield Plc (H & C)

Outcome

1. I do not uphold Mr B's complaint and no further action is required by H & C.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr B's complaint is that he was wrongly advised by Lane Clark & Peacock **(LC&P)** through his employer, H & C, to opt out of the State Earnings Related Pension Scheme **(SERPS)**.

Background information, including submissions from the parties

4. Mr B was an employee of H & C.
5. In 1989, H & C employed the services of LC&P to provide advisory services to its employees.
6. H & C sent an undated letter to its employees containing information about contracting out of the SERPS. The introduction section of the letter said:

"This letter is about the State earnings-related pension scheme, commonly known as SERPS.

For a somewhat obscure reason, which is explained in the attached Technical Appendix, you may be able to gain from contracting out of SERPS and taking out something called a minimum personal pension instead."

7. In the 'Action required by those wishing to contract out of SERPS' section of the letter, it said:

“The action you need to take is to contact your financial adviser or fill in the form headed ‘Application to contract out of SERPS’ and the Norwich Union’s rebate personal pension plan proposal and make sure that they reach me by 13th January 1989 at the latest.”

8. Mr B, subsequent to H & C’s letter, contracted out of the SERPS in 1989.
9. He also says that following further advice that he received from LC&P, he contracted in again in 1993.
10. H & C changed its name to Elementis Plc in January 1998.
11. Mr B contends that had he not received H & C’s letter, he would not have opted out of SERPS.
12. Mr B considered retiring in 2010 and received a quotation of his SERPS pension from Norwich Union. He subsequently transferred the fund to another provider in return for a slightly higher pension.
13. In 2014, Mr B complained to LC&P about the advice he received from them regarding contracting out of the SERPS. LC&P did not uphold the complaint. It said that Mr B fell within relevant guidelines on age and earnings when he contracted out of SERPS.
14. In 2016, Mr B complained to the Scheme trustees. However, they considered that although H & C communicated LC&P’s advisory service and other general information to employees, LC&P were ultimately responsible for any financial advice given.

Adjudicator’s Opinion

15. Mr B’s complaint was considered by one of our Adjudicators who concluded that no action was required by H & C. The Adjudicator’s findings are summarised briefly below:
 - The key question was whether H & C’s letter constituted advice.
 - H & C were not authorised to provide financial advice.
 - The language used in the letter made it clear that overall, the decision on whether or not to contract out of the SERPS was that of the individual.
 - Further, the letter said that those wishing to contract out should speak to their own financial adviser. This distinguished the role of H & C, which was one of providing general information, to that of the provision of financial advice.
 - Employees were given the option to return completed forms to H & C without taking financial advice, but there was no suggestion that they ought to do this.

- The Adjudicator's opinion was that Mr B's complaint against H & C should not be upheld.
16. Mr B did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr B provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr B for completeness.

Ombudsman's decision

17. Mr B says that he disagrees with the opinion reached by the Adjudicator. He has referred to the letter in question and said:
- “The opening section indicates that if you are a man under 45 it may be advisable to contract out of SERPS.”
18. This section does say that contracting out may be in the interest of those within a specific age range, however, I do not consider that this constituted advice.
19. Mr B has also said that contracting out was encouraged because two extra years of contracting out would be available if immediate action was taken. To clarify, this was an incentive offered by the government.
20. Importantly, the incentive was cited under the section, “Action required by those wishing to contract out of SERPS” and therefore applies to this group. The letter brings it to the attention of the reader that doing so immediately would carry particular advantages.
21. Mr B has suggested that it was unlikely most “ordinary workers” would have a personal financial adviser, and they would be inclined to act on the information in the letter. On this point, he has drawn attention to paragraph 9, which he regards as clear advice to complete the application. Paragraph 9 says:
- “If you are undecided what to do, fill in the forms anyway and send them in. Lane, Clark & Peacock will advise you if it is not in your interest to contract out.”
22. This confirms that H & C were not providing advice and instead, LC&P were in place to provide this service.
23. Mr B has said he does not believe that all of the parties involved in encouraging H & C employees to contract out were impartial. He says that a chairman of H & C was also a director of Norwich Union.
24. Whilst I cannot comment on the accuracy of this, the focus of the investigation conducted at this office was to establish whether advice was provided by H & C. It is my view that H & C did not provide advice and the statements made within the letter did not constitute advice.

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25. Therefore, I do not uphold Mr B's complaint.

Anthony Arter

Pensions Ombudsman
11 January 2017