PO-22617

Ombudsman's Determination

Applicant	Mr N
Scheme	The Prudential Group Pensions Savings Plan (**the Plan**)
Respondent	Prudential Corporate Pensions Trustee Limited (**the Trustee**)

Outcome

1. I do not uphold Mr N's complaint and no further action is required by the Trustee.

Complaint summary

2. Mr N complains about the value of his pension benefits. He does not believe that his benefits have been calculated correctly as he was under the impression that he would receive more than he had been quoted. As a result, he would like additional funds added to his pension benefits.

Background information, including submissions from the parties

3. On 1 March 1990, Mr N joined the Plan, which was an occupational defined contribution scheme set up by his employer, Hurco Europe Ltd. The Plan is administered by Prudential on behalf of the Trustee and was contracted-out of the State Earnings Related Pension Scheme (**SERPS**). Mr N left this employment on 17 February 1995 and became a deferred member of the Plan.

4. Prudential sent Mr N statements on an annual basis. On 5 April 1995, Prudential issued Mr N's benefit statement. This stated that Mr N's "savings account" totalled £10,775.12 and that he had a Protected Rights Fund of £4,743.21.

5. On 15 July 2013, Prudential wrote to Mr N. In its letter it explained that with effect from 6 April 2012, "the Government removed the ability to contract-out under this type of Plan and any accrued benefits have to be treated as ordinary rights." Prudential provided an illustration alongside this that confirmed Mr N's fund value as £31,195.99. Depending on the investment growth, Prudential said that this could produce an annual pension between £1,040.00 and £2,120.00. It also stated the following:-

- "These figures are only examples and are not guaranteed – they are not minimum or maximum amounts. What you will get back depends on how your investment grows and on the tax treatment of the investment."
- "Your retirement fund could be less or more than this."
- "Do not forget that inflation would reduce what you could buy in the future with the amounts shown."
- "Your pension income will depend on how your investment grows and on interest rates at the time you retire."

6. On 9 January 2017, Prudential issued an illustration that confirmed the value of Mr N's fund within the Plan was £37,161.89. The illustration also provided examples of what Mr N's projected benefit values could buy, such as an annual pension of £1,910.00 depending on investment returns and interest rates. However, it restated that the figures were not guaranteed.

7. On 11 January 2017, Mr N complained to Prudential as he was unhappy with the value of his contracted-out benefits within the Plan.

8. Prudential responded to the complaint on 26 January 2017. It explained that Mr N's contracted-out benefits were based on investment performance and the final fund value. Prudential provided a copy of the Plan leaflet that outlined the contribution levels for both the Plan and contracted-out benefits. This explained that Mr N's contracted-out benefits would be protected rights, used to purchase a pension commencing on the day following his normal retirement date.

9. On 7 February 2017, Mr N contacted Prudential as he remained unhappy. He thought his pension benefits should have been twice the amount that Prudential was quoting.

10. On 2 March 2017, Prudential issued a further response. It stated that Hurco Europe Ltd had decided to contract-out all staff that agreed to do so. Prudential had supplied Hurco Europe Ltd with the relevant guidelines and necessary paperwork for this to take place. Prudential said the reason for the level of projected yearly pension was due to the disappointing performance of his pension investments. The illustrative growth rates quoted at the time Mr N joined the Plan were set by its regulator and were much higher than the rates set by the regulator today. The decline was as a result of changes in the financial markets and the new rates were intended "to reflect a more realistic view of future performance."

11. On 7 March 2017, Mr N escalated his complaint and invoked the Plan's internal dispute resolution procedure (**IDRP**). He said that he had a letter, dated 9 January 2017, from HM Revenue & Customs (**HMRC**) that said he should receive a sum of £39.31 per week from his personal pensions that were contracted-out. As such, he should receive £1,135.68 per year in relation to this, as Prudential's documents at the time he joined the Plan indicated that Prudential would at least match his SERPS benefits. However, Prudential's forecasts indicated that he would only get an amount

broadly equivalent to SERPS, despite the standard contributions towards the Plan from him and his employer.

12. On 28 June 2017, the Trustee issued a complaint response under stage one of the IDRP. Mr N's complaint was not upheld as the guidance at the time suggested it would be more beneficial for him to have contracted-out, and there was no guarantee as to the level of pension this would produce. The Trustee confirmed that Mr N's forecasts consisted of his contracted-out benefits as well as the standard contributions from Mr N and his employer. This was demonstrated in the April 2017 statement which quoted a transfer value of £37,475, of which £17,622.51 related to contracting-out.

13. On 12 December 2017, Mr N wrote to Prudential to invoke stage two of the IDRP. He did not believe his questions had been answered as he had not received an explanation as to what happened to his and his employer's contributions that he thought amounted to 4.8% and 6% respectively. Mr N also questioned the anticipated pension figures quoted in the illustration of 9 January 2017, when the letter from HMRC indicated that he ought to receive more.

14. On 8 March 2018, the Trustee replied under stage two of the IDRP. The Trustee stated the following:

    - The Plan was a money purchase scheme that provided no guarantees as to the benefits provided.

    - When Mr N joined the Plan, he had the option to opt out of SERPS, which he decided to do. He remained contracted-out for the entirety of his active membership in the Plan.

    - Contributions were paid into the Plan on the following percentages of Mr N's gross weekly or monthly earnings:-

        - Employee: 4.5%

        - Employer: 5.5%

    - As Mr N was contracted out, the contributions included rebates in national insurance contributions that both Mr N and his employer received on the following percentages of Mr N's band earnings:-

        - Employee: 2.0% (1.8% from April 1993)

        - Employer: 3.8% (3.0% from April 1993)

    - By contracting-out, the hope was that the accumulated value of the National Insurance contribution rebates would be able to buy a pension greater than the SERPS pension that was given up. However, there were no guarantees that this would be the case and this was stated in the Member Booklet that Mr N would have received. Furthermore, there were no guarantees in the Plan Rules.

- The guidelines about contracting-out were based on age, the likely investment returns on the rebated National Insurance contributions and the cost of converting the accumulated fund into a pension; the annuity rate. As such, assumptions were made on future investment returns and annuity rates.

- The investment returns were reflective of the rates of inflation and interest rates, as these had decreased since 1990. Notably, since 1990, annuity rates had generally fallen by 66%.

- As the value of Mr N's National Insurance contribution rebates were not guaranteed, his complaint was not upheld. Mr N is not obligated to purchase an annuity with Prudential and has other available options.

15. On 1 May 2018, Mr N complained to this Office. He explained that from the verbal assurances provided, he thought the Plan was due to provide him with a pension equivalent to SERPS, had he not contracted-out. However, when he reviewed the forecasted figures that Prudential provided him, he did not think they were correct as they were lower than he had expected.

16. Whilst we have been considering Mr N's complaint, Prudential has provided further information in relation to Mr N's contribution rates, as follows:-

    - When the Plan was set up, members could contract-out and pay additional contributions based on their gross earnings, as opposed to paying the exact rebate from contracting-out. The additional contributions from the member's gross earnings were designed to approximate the rebate based on their band earnings.

    - The overall rate that Mr N paid was 5% of his gross earnings, which comprised of:-

        - 3% as the basic compulsory contribution;

        - 1.5% as the extra compulsory contribution for contracting-out; and

        - 0.5% as an additional voluntary contribution.

    - Mr N appears to have added the basic contributions of 3% with the exact contracting out rebates into the Plan from 1993, to come to figures of 4.8% and 6% for member and employer contributions respectively.

17. Prudential also provided the following documents:-

    - The contributions schedules provided by the employer which confirmed the contributions paid by the employer and Mr N as well as the contribution rates.

    - Spreadsheets completed by the employer that confirmed the contracted-out earnings.

    - Copies of annual statements.

    - A leaflet that confirmed the bonus rates for each year, from 1987 to 2018.

Adjudicator’s Opinion

18. Mr N’s complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee. The Adjudicator’s findings are summarised below:-

- Mr N’s belief that his pension benefits ought to be more was based on Prudential’s information when he joined the Plan, HMRC’s letter, his own calculations and Prudential’s estimated annuity rates. However, Prudential’s information did not promise or guarantee that the protected rights benefits would match what a member could have expected from SERPS.

- HMRC’s letter did not conclude that its estimate was what Mr N should be getting. It recognised that the amount Mr N could expect would depend on the type of scheme and possibly on investment choices. So, the letter did confirm that Mr N’s protected rights should be sufficient to purchase an annuity of £39.31 a week.

- The Adjudicator could not find a correlation between the contribution rates used by Mr N in his calculations and those provided in the Plan leaflet.

- The figures in Mr N’s illustrations could be explained, as with-profits funds had generally experienced disappointing performance since Mr N ceased contributing to the Scheme.

- The Adjudicator had considered the contributions made, the bonuses that had been applied to Mr N’s pension benefits as well as additional information from Prudential’s actuaries. She concluded that there was nothing to suggest that Prudential had administered Mr N’s pension benefits incorrectly.

19. Mr N did not accept the Adjudicator’s Opinion and the complaint was passed to me to consider. I agree with the Adjudicator’s Opinion and I will therefore only respond to the key points made by Mr N for completeness.

Ombudsman’s decision

20. Mr N claims that his pension benefits are not what he expected due to errors made by Prudential. This is because an expectation was set when Mr N received a letter from HMRC that estimated a contracted-out equivalent of £39.31 a week. Based on this information, Mr N reviewed Prudential’s illustrations and its annuity rates, which indicated an annuity rate similar to one that he had calculated using HMRC’s information. As a result, Mr N has questioned Prudential’s calculations, the information it provided to him, and queried what had happened to the contributions made by him and his employer.

21. As previously identified, the letter from HMRC dated 9 January 2017, does not confirm that Mr N should be receiving the quoted figure. This was an estimate, as the actual amount Mr N would be entitled to is dependent on the scheme and in some instances, the investment performance. So, although Prudential may be quoting

figures that are lower than Mr N expected, I cannot see that this immediately indicates that an error has occurred.

22. I understand Mr N has claimed that he received verbal assurances from Prudential about the protected rights matching what he could have expected from SERPS. However, there is no supporting evidence to suggest that this happened. Further, there is nothing in the Plan's leaflet to that effect, meaning Mr N should not have expected this. I find that it would have been reasonable for Mr N to have queried why the guarantee was not mentioned in the written information provided to him when he joined the Plan.

23. Moreover, with regard to the management of Mr N's pension benefits, there is nothing to suggest that there are missing contributions. Whilst I appreciate Mr N may have been hoping for more from his benefits, what he is entitled to is and always has been dependent on investment performance. The information provided suggests that Prudential has applied the contributions and relevant bonuses to Mr N's pension account. I cannot see that a mistake has been made.

24. Therefore, I do not uphold Mr N's complaint.

Anthony Arter

Pensions Ombudsman
8 July 2019