

## **The complaint**

Mr M complains that a business which is now part of ReAssure Limited (ReAssure) gave him unsuitable advice to start a pension plan to opt out of the State Earnings Related Pension Scheme (SERPS). He also feels that ReAssure gave him unrealistic forecasts. He would like ReAssure to accept responsibility for the unsuitable advice and put him back into the position he would be in but for the advice.

Although Mr M started his pensions with another provider, ReAssure is responsible for this complaint. So I'll only refer to it in my decision.

## **What happened**

Mr M had two personal pensions with ReAssure. One of these was set up so that he could contract out of SERPS following advice ReAssure provided in 1991.

I understand that at the time of the advice, no workplace scheme was available to Mr M.

Mr M is unhappy with the advice and complained that the pension plans had been mis-sold.

ReAssure felt that the advice was suitable. It said that Mr M had been below the pivotal age of 45 at the time of the advice. And that he'd been earning significantly more than the Lower Earnings Limit. It also said he hadn't been participating in a pension arrangement offered by his employer at that time. Therefore it felt that Mr M had been likely to benefit from contracting out of SERPS at the time of the advice.

ReAssure also said that the illustration provided at the time of the advice would've made it clear that the values shown were estimates, and that they weren't guaranteed.

Mr M was unhappy with ReAssure's response, so he referred his complaint to this service. He said the adviser had told him that he'd be better off if he took out the policy. But said that he was now about £35 each week worse off. And that this would cause him financial hardship.

Our investigator didn't think that the complaint should be upheld. He couldn't say that the advice was unsuitable.

Mr M didn't agree with our investigator. He still felt that ReAssure had given him bad advice to contract out of SERPS.

As agreement couldn't be reached, the complaint has come to me for a review.

## **What I've decided – and why**

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

Having done so, I'm not going to uphold it. I know this will be disappointing to Mr M. I'll explain the reasons for my decision.

Before I consider the details of the complaint, I'd first like to give some background to SERPS.

### *SERPS*

SERPS was a top-up to the basic state pension payable at the consumer's state pension age. This meant that in addition to their basic state pension, consumers would also receive a SERPS pension at retirement.

You had to be employed to qualify for SERPS as benefits were built up by National Insurance (NI) contributions made by consumers and their employers. The amount of the benefits depended on the consumer's earnings each tax year.

Consumers could choose to opt out of SERPS, also known as contracting-out. So rather than building up an additional state pension, they could build up benefits by redirecting some of their NI contributions to a personal pension plan, like the one Mr M started in 1991. NI contributions stayed the same whether someone was contracted in or out.

In order to do this, the consumer and employer continued to pay the normal level of NI contributions. But, once a year, the state paid – as a rebate - part of these contributions into a personal pension plan. In some cases, the state increased this as an incentive to contract-out.

The amount paid into the personal pension plan was invested in the hope it would grow sufficiently and the future benefits would be more than the consumer would've received from SERPS. This depended on the growth achieved and annuity rates at retirement.

The redirection of NI contributions was reflected in the state pension by a contracted-out deduction (COD). First the state worked out the consumer's entitlement to SERPS as if they hadn't contracted out. Then it applied a COD for each employment or each period where the consumer was contracted-out through a workplace pension or a personal pension plan.

I next considered whether the advice to contract out of SERPS was suitable.

### *Was the advice to contract out suitable?*

When the state decided to allow individuals to contract out of SERPS, it didn't give advice about who should be advised to remain in SERPS and who it felt would benefit from contracting out.

So to try 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. Two key criteria were considered in these comparisons - age and earnings.

The rebates paid by the Government led to it being considered more attractive for younger individuals to contract out than those who were older. An individual's earnings also needed to be considered to see if contracting out was likely to be beneficial.

The age where the provider's advice about whether contracting out was likely to be beneficial was known as the 'pivotal age'. Mr M was under the pivotal age when he contracted out. He was 33 and the pivotal age was 45.

Mr M's annual earnings at the time were £13,000. This means that Mr M was significantly above the minimum salary set by ReAssure for individuals to contract out. Therefore his

earnings were sufficient to ensure that the rebates would cover any applicable charges as well as providing a reasonable opportunity for his fund to grow.

Therefore, for both age and earnings, Mr M was within the guidelines for potentially benefiting from contracting out of SERPS. But there was no guarantee that he would be better off. The amount paid into his personal pension was invested in the hope it would grow sufficiently so that the future benefits would be more than Mr M would've received had he remained in SERPS. That depended on the growth achieved by the funds in which the pension was invested and the rates available at retirement for converting the pension fund into an annuity.

It's disappointing that investment returns have been lower than anticipated and annuity rates more expensive than expected at the time Mr M was advised to contract out. This means that the gains from contracting out are not as great as had been hoped. And I can understand Mr M's disappointment that he feels he may now receive less from the state pension than he would have if he'd remained in SERPS. But this doesn't mean the advice given at the time was unsuitable.

I've also considered Mr M's point that his adviser had told him that he would be better off if he took out the pension plan. I can't know exactly what the adviser told Mr M at the time of the advice, but the documentary evidence makes it clear that the benefits from the plan weren't guaranteed. Therefore I can't fairly uphold this part of the complaint.

I appreciate that Mr M feels that there has been a negative impact on his state pension resulting from contracting out of SERPS. And I'm sorry that he's now worse off. But I can't reasonably hold ReAssure responsible for this. Taking everything into account, I'm not persuaded that ReAssure's advice to contract out of SERPS was inappropriate. So I don't uphold the complaint.

### **My final decision**

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 1 May 2024.

Jo Occleshaw  
**Ombudsman**