DRN-3064004

## The complaint

Ms B complains about the advice given by Sun Life Assurance Company of Canada (U.K.) Limited trading as Sun Life Financial of Canada ("Sun Life") to transfer the benefits from her defined-benefit ('DB') occupational pension scheme to a personal pension. She believes the advice was unsuitable and has caused a financial loss.

Ms B is being represented by a third party but for ease of reading this decision I'll largely refer to representations as being made by Ms B.

## What happened

Ms B had an occupational pension that she had accrued working for an employer between 1987 and 1991.

Ms B says she was approached by an adviser working for Lincoln Financial Group ("LFG") in 1999 to discuss potentially transferring her pension. Ms B has said she was aware of the adviser by name as she remembers them having been involved in the management of the occupational pension scheme when she worked for her former employer. Sun Life has since become responsible for answering complaints about this policy. So, to keep things simple, I'll generally refer to Sun Life in my decision.

Sun Life completed a fact-find to gather information about Ms B's circumstances and objectives. It recorded that she was 34 at the time of the advice, single, with no dependents, owned her own home, with an outstanding mortgage, and employed. Sun Life also carried out an assessment of Ms B's attitude to risk. It initially deemed this to be 'balanced'. But it says Ms B was interested in investing in a specific fund which carried additional risk. So, it revised its assessment of her attitude to risk to 'balanced / aggressive'. Ms B's DB pension had a transfer value of £14,490. This was made up of £5,064 in respect of contributions Ms B had made to the pension fund and £9,426 earned in respect of contracting out of the State Earnings Related Pension Scheme (SERPS).

In August 1999, Sun Life (then LFG) advised Ms B to transfer her pension benefits into a 'Lincoln Personal Pension', which Sun Life has also referred to, in its final response, as 'Personal Transfer Accounts'. The 'summary of advice' document, provided by Sun Life at the time, said the reasons for this recommendation were,

a) *With your balanced – aggressive risk rating and the long term to your expected retirement age, there is a very good chance that you will achieve better benefits at retirement by transferring.*

b) *You prefer to have a wider choice of investment funds that a Personal Pension offers and the ability to switch between funds to suit your needs".*

The document said that Ms B was not concerned about giving up the guaranteed element of this pension as it only formed a small part of her retirement provisions and she preferred control over how it was invested. It also said she was happy to forego the death benefits associated with her existing scheme as she was single with no dependents. And it noted that the existing scheme was apparently in liquidation, with no future plans to improve the available pension benefits.

The transfer went ahead in line with Sun Life's recommendation. It has explained that two new accounts were opened – one to receive the transfer of the contributions Ms B had made to her pension and another for the protected rights element of the transfer value. Sun Life has said this was due to how its systems were set up at the time.

In early 2020 Ms B made an enquiry about taking her pension savings as cash, as she was approaching her 55th birthday. Sun Life sent her a summary outlining the value of both of her pension plans and said that, if taken as cash, they'd be worth £13,245.27 and £24,653.19 respectively.

Ms B then raised concerns with Sun Life. She said she didn't think her pension had been a good investment. She also said a colleague of hers from the same former employer had made a successful claim for mis-selling so she wanted her pension looking into. She added that she had automatically enrolled in her pension scheme by her employer in 1987, and hadn't had a choice regarding this. She indicated she thought it had always been managed by LFG, and the specific adviser she spoke to in 1999, from the outset. She said she was not aware of how her pension savings were invested and had understood these were being managed on her behalf by the adviser that had recommended the transfer. She says Sun Life never informed her that her pension was not being managed in this way. And if it had, she'd have taken independent financial advice regarding how it was invested.

Sun Life said a full transfer analysis had been carried out which concluded that Ms B may achieve a better return by transferring. It said the adviser could not recommend how her savings were invested, he could only look at Ms B's attitude to risk when making a recommendation. And, having done so, the adviser concluded the transfer was right for Ms B, also bearing in mind the money transferred only being a small part of her retirement provisions and the existing scheme being in liquidation. So, Sun Life thought the recommended plan was suitable. Sun Life also said, while an investment recommendation wasn't made, information was provided which allowed Ms B to choose how her funds were invested. And her pension savings were invested in professionally managed funds – the unit values of which could go up or down. And it said it believed LFG had made Ms B aware shortly after the transfer that it had changed its operating model, and advisers were no longer available.

I issued a provisional decision in June 2022 explaining that I intended to uphold Ms B's complaint. Below are extracts from my provisional findings, explaining why I thought this.

*When considering what is fair and reasonable, I am required to take into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.*

*Sun Life has said that a full transfer analysis was carried out – so it thinks the recommendation was correct. But a transfer analysis being completed is not on its own enough to say that the advice given was suitable.*

*The advice was provided by Sun Life (then LFG) in August 1999. At this time, it was regulated by the Personal Investment Authority ('PIA'). It was a previous member of the Life Assurance and Unit Trust Regulatory Organisation (LAUTRO). When the PIA took responsibility for LAUTRO businesses in 1994, they adopted the LAUTRO rules. And these adopted rules applied at the time of the advice in this case.*

*The LAUTRO rules included a Code of Conduct at Schedule 2 to the rules. This required* *advisers to exercise 'due skill, care and diligence' and 'deal fairly with investors'. Paragraph 6 of the Code of Conduct required advisers to give 'best advice', which included that they should not:*

- *Make inaccurate or unfair criticisms of other investments, or of any occupational or state pension; or*

- *Advise the investor to convert, cancel or allow to lapse any investment contract, occupational or state pension, unless they genuinely believed it to be in the consumer's best interest and clearly disclosed all relevant consequences and disadvantages.*

*Paragraph 8 required an adviser to consider 'the investor's financial position generally and to all other relevant circumstances' - which included their rights under occupational and state pensions. It required them to recommend the contract from within the provider or marketing group's range which was most suited to the investor.*

*However none of this went as far as meaning that the adviser could just sell the least unsuitable contract from within the provider's range. Paragraph 13(4) made clear that if a customer required a type of policy that couldn't be satisfied by the provider, they should be referred to an IFA.*

*I've considered the advice given to Ms B with this in mind.*

*The representative has said that Ms B thinks all contact regarding this sale was carried out by post. And they don't think this is an appropriate way of conducting the sale. Sun Life hasn't provided any information to the contrary. But even so, I don't think the sale being conducted by post means it was necessarily unsuitable. There wasn't a requirement on the business to use a specific channel of communication. And the business was entitled to set its own processes and procedures.*

*That being said, while I don't think the communication channel used meant there was anything wrong with the sale, I think there were a number of other factors that made it unsuitable.*

*Financial viability*

*Achieving a better return on her pension is the main aim that Sun Life has suggested Ms B had at the time of advice. And the suitability document said "there is a very good chance that you will achieve better benefits at retirement by transferring" based on her risk profile. But I don't agree with this statement for several reasons.*

*Sun Life said it initially categorised Ms B as having a balanced attitude to risk but this was later updated to balanced / aggressive, because she expressed, during the advice process, an interest in diversifying her investment and specifically investing in a higher risk fund. It has also made reference to the existing pension being only a small part of Ms B's retirement provisions.*

*Ms B has said she had no other investment backed assets. And none of the information I've seen suggests that Ms B was an experienced investor. From what I've been told and provided, it appears that Sun Life approached Ms B to offer advice, rather than her seeking advice on transferring her pension with an investment plan already in mind. I'm also conscious that part of her original dissatisfaction with Sun Life was that she didn't know that an adviser was no longer managing her fund and making decisions for her. This would seem to be at odds with Sun Life's suggestion that she wanted to choose and manage funds* *herself and that she wanted to invest in a specific fund in 1999 – if she thought investment choices were being made for her. So, I don't think diversifying her portfolio and taking additional risks were genuine objectives for Ms B.*

*I also haven't seen any information, recorded at the point of sale, about Ms B's other retirement provisions – to show that her DB scheme was only a small part of her provisions. And indeed, Ms B has said this statement was incorrect and she had little by way of other provisions. Which suggests she didn't have the capacity for loss that Sun Life has suggested.*

*In addition, her existing DB scheme included guaranteed benefits. If Ms B was looking to take additional risks, as Sun Life claims, with some of her retirement funding to achieve greater returns, I don't understand why she'd risk a portion of her retirement provisions that were guaranteed rather than another part of her provisions (although again details of what other provisions she had don't appear to have been recorded). And the documents provided don't explain why that potential alternative wasn't discussed with Ms B.*

*With this in mind, I'm not sure Ms B's risk profile was in fact balanced – aggressive. As an inexperienced investor and given her understanding that the fund was going to be managed on her behalf, it was unlikely she had a specific fund choice in mind – which seems to have been the basis of this categorisation. It is also questionable in my view whether her attitude to risk was even balanced, given that she has said she had little by way of other provisions so in my view a low capacity for loss. But, given her time left to retirement, I don't think saying her attitude to risk was balanced is entirely unreasonable.*

*The advice was given during the period when the regulator was publishing 'discount rates' for use in loss assessments resulting from the industry-wide Pensions Review. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, I consider they provide a useful indication of what growth rates would have been considered reasonably achievable when the advice was given in this case.*

*The investment return (critical yield) required to match the occupational pension at age 60, which according to the information Sun Life has provided is when Ms B was interested in retiring, was quoted as 7.3% per year. This compares with the discount rate of 7.0% per year for 25 years to retirement in this case.*

*For further comparison, the regulator's upper projection rate at the time was 9%, the middle projection rate 7%, and the lower projection rate 5%.*

*Taking this into account along with, the composition of assets in the discount rate, what I've said about Ms B's attitude to risk and also the term to retirement, I think Ms B was likely to receive benefits of a materially lower overall value than the occupational scheme at retirement, as a result of investing in line with her balanced attitude to risk. And even if I agreed her attitude was balanced / aggressive, which again for the avoidance of doubt I don't, I think it is unlikely she'd have received a better return. And I certainly don't agree with the suitability report that there was a "very good chance" of this. At best, given the required growth, it seems likely the return might've been broadly the same. And there would be little point in Ms B giving up the guarantees available to her through her existing pension only to achieve, at best, the same level of benefits outside the scheme.*

*For this reason alone, a transfer out of the DB scheme doesn't seem to have been in Ms B's best interests. Of course, financial viability isn't the only consideration when giving transfer advice. There might be other considerations which mean a transfer is suitable, despite* *providing overall lower benefits. I've considered these below.*

*Flexibility and control*

*The suitability report said that the other main objective that transferring would achieve was that it'd give Ms B access to a wider investment choice and allow her to choose the funds that met her objectives. But again, I've seen no evidence that Ms B was an experienced investor. And her concerns that her pension and investment choices were not being managed on her behalf suggests to me that this was not a genuine objective, rather was a consequence of the transfer, and has been overstated.*

*I also haven't seen anything that suggests, at the time of the advice, Ms B required greater flexibility in retirement in terms of her income. I think given how long it was until she retired, it would've been difficult to make any definitive decision about this at that time. The information from Sun Life indicates she was interested in potentially retiring at 60 at the time. But not that she had need for fluctuating pension repayments or that retiring under her existing scheme, albeit potentially early and at a reduced pension rate, was out of the question. It appears her complaint began after receiving information she'd asked for in 2020, when looking to take her fund as cash at age 55. Suggesting this may since have become a preference. But I don't think this was a known requirement at the point of advice.*

*As Ms B had at least 20 years before she could think about accessing her pension, I think it was too soon to make any kind of decision about transferring out of the DB scheme. So, I don't think it was a suitable recommendation for Ms B to give up her guaranteed benefits when she didn't know what her needs in retirement would be. And if Ms B later had reason to transfer out of the DB scheme, she could have done so closer to retirement.*

*Concerns over financial stability of the DB scheme*

*Sun Life has said that Ms B's DB scheme was in liquidation at the point of the advice and "the surplus was being distributed amongst the former members according to salary and length of service - there would therefore be no future plans to improve benefits". I'm aware that Ms B's former employer, under which the DB benefits accrued entered compulsory liquidation in 1991. And I can see that a letter sent to Sun Life around the time of the advice, from the assurance society responsible for the scheme, indicated the scheme was in the process of being wound up. And there was no fund of last resort in place as a safeguard at the time.*

*But the letter also said that the trustees of Ms B's occupational pension scheme had secured the benefits it went on to detail, with the assurance society that sent the letter, for Ms B. The benefits detailed – a deferred pension allowing for early retirement and a tax free lump sum, including a guaranteed minimum pension, to be revalued annually in line with the retail price index – seem to be the same as those I'd have expected under the occupation pension scheme. The details of how those benefits had been secured are unclear. But the information suggests that the assurance society had taken on the responsibility of providing the benefits due to Ms B under the existing pension scheme – potentially as part of it being wound up. That assurance society was not tied to the former employer. And indeed, still trades now.*

*So, based on the limited information available, although Ms B's former employer had ceased trading and the staff pension scheme may've been in the process of being liquidated, it appears that the benefits due to Ms B were secured via another provider. So, I don't think there was a significant threat to Ms B's pension fund. And so, it doesn't appear that she had* *a need to be concerned or to complete a transfer because of this.*

*Suitability of investments*

*Sun Life has said its adviser could not recommend which investments Ms B place her pension fund in and could only provide information in order for her to make that decision. Ms B has said she was under the impression her investments were being chosen and managed by the adviser that recommended she transfer. It's difficult for me to see how the overall recommendation to transfer could be considered to be in Ms B's best interests without some thought about how the funds would be invested. And at the very least, what Ms B has said about her understanding of matters calls into question how clear any information given was.*

*But ultimately, as I intend to uphold the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Ms B, it follows that I don't need to consider the suitability of the investment recommendation. This is because Ms B should have been advised to remain in the DB scheme and so the investments in question wouldn't have arisen if suitable advice had been given.*

*Summary*

*I don't doubt that the flexibility and control offered by a personal pension would have sounded like attractive features to Ms B. But Sun Life wasn't there to just promote the potential positives or to transact what Ms B might have thought she wanted. The adviser's role was to really understand what Ms B needed and recommend what was in her best interests.*

*Ultimately, I don't think the advice given to Ms B was suitable. She was giving up a guaranteed, risk-free and increasing income in retirement at a stage where she had no pressing need to make such a decision. And by transferring, I think Ms B wasn't very likely to improve on the guaranteed retirement benefits she already had and, in my view, there were no other particular reasons which would justify a transfer and outweigh this.*

*So, I think Sun Life should've advised Ms B to remain in her DB scheme.*

*Of course, I have to consider whether Ms B would've gone ahead anyway, against Sun Life's advice. I've considered this carefully, but I'm not persuaded that Ms B would've insisted on transferring out of the DB scheme, against Sun Life's advice. I say this because, from what I've seen, Ms B was an inexperienced investor. She doesn't seem to have initiated the discussion around this policy as she says she was contacted by Sun Life. So, it doesn't appear Ms B was set on doing anything with her policy. And from what she has told us this pension accounted for the majority of Ms B's retirement provision. So, if Sun Life had provided her with clear advice against transferring out of the DB scheme, explaining why it wasn't in her best interests, I think she would've accepted that advice.*

*In light of the above, I think Sun Life should compensate Ms B for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.*

*I understand that this complaint started after Ms B enquired about taking pension benefits at age 55. So currently I think it is reasonable that this – her retiring and taking benefits from the pension at age 55 – should be the basis for the calculations.*

**Responses to my provisional decision**

I gave both parties an opportunity to make further comments or send further information before I reached my final decision.

Ms B's representative said that she, and they, had nothing further to add.

Sun Life said it agreed with my provisional findings and would await my final decision on the matter.

**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, as neither party have provided any further comments for me to consider, I see no reason to depart from my provisional findings. So, for the reasons summarised above, I think the advice Sun Life gave to Ms B was unsuitable. I think it should've advised her to remain in her DB scheme and I think she would've accepted this advice. So, I think Sun Life should compensate Ms B.

**Putting things right**

A fair and reasonable outcome would be for the business to put Ms B, as far as possible, into the position she would now be in but for Sun Life's unsuitable advice. I consider Ms B would have most likely remained in her DB scheme if suitable advice had been given.

Sun Life must therefore undertake a redress calculation in line with the regulator's pension review guidance as updated by the Financial Conduct Authority in its Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers.

As I've mentioned, I understand that this complaint started after Ms B enquired about taking pension benefits at age 55. So, I think it is reasonable that this – her retiring and taking benefits from the pension at age 55 – should be the basis for the calculations.

This calculation should be carried out as at the date of my final decision and using the most recent financial assumptions at the date of that decision. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Ms B's acceptance of the decision.

Sun Life may wish to contact the Department for Work and Pensions (DWP) to obtain Ms B's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P). These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the occupational scheme on Ms B's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Ms B's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Ms B as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to her likely income tax rate in retirement - presumed to be 20%. So, making a notional deduction of 15% overall from the loss adequately reflects this.

The payment resulting from all the steps above is the ‘compensation amount’. This amount must where possible be paid to Ms B within 90 days of the date Sun Life receives notification of her acceptance of my final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes Sun Life to pay Ms B.

It’s possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above - and so any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90 day period in which interest won’t apply.

**My final decision**

For the reason’s I’ve explained I uphold Ms B’s complaint.

To resolve matters I order Sun Life Assurance Company of Canada (U.K.) Limited trading as Sun Life Financial of Canada to take the action set out in the ‘Putting things right’ section of my decision, set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Ms B to accept or reject my decision before 18 August 2022.

Ben Stoker
**Ombudsman**