

## **The complaint**

Mr E complains that he was given inappropriate advice about the transfer of some pension savings by Sun Life Assurance Company of Canada (U.K.) Limited trading as Sun Life Financial of Canada ("Sun Life").

## **What happened**

The advice that Mr E received was provided by Cannon Lincoln. That firm now forms part of Sun Life, so it is Sun Life that needs to deal with Mr E's complaint. In this decision, for ease, I will simply refer to the business that Mr E dealt with as Sun Life.

Mr E has been assisted in making his complaint by a firm of solicitors. But in this decision, again for ease, I will generally refer to all communications as having been with, and from, Mr E himself.

Mr E held deferred defined benefits ("DB") in an occupational pension scheme ("OPS"). In 1991 he received some advice from Sun Life about the potential transfer of those pension benefits to a personal pension plan. Mr E accepted Sun Life's recommendation, and his pension benefits were transferred later that year.

In 2022 Mr E complained to Sun Life about the advice he'd been given. Sun Life says that it asked Mr E to complete a questionnaire so that it would have more information about his circumstances at the time the advice was given. It says that it didn't receive any further information from Mr E. But Mr E says that the requested information was returned to Sun Life in July 2022. When he didn't receive any further response he asked us to consider his complaint.

Mr E's complaint has been assessed by one of our investigators. He didn't think that the advice Sun Life had given to Mr E in 1991 had been suitable. He said there was no evidence that Sun Life had provided Mr E with the information he needed to make the transfer decision. And he thought that, on the limited evidence available, it was unlikely that Mr E would have found the transfer attractive, had better information been provided. So he thought that Mr E's complaint should be upheld, and he asked Sun Life to look into whether Mr E had lost out.

Sun Life didn't accept that assessment. It said that it was unreasonable to expect it to make any comments on the assessment without the information it had asked Mr E to provide about his circumstances. And it said that it was possible that the advice it had given to Mr E might already have been checked as part of the industry wide pensions review exercise that took place towards the end of the 1990s.

So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process. If Mr E accepts my decision it is legally binding on both parties.

## **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.

In deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mr E and by Sun Life. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

At the outset I think it is useful to reflect on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

Sun Life was aware that we were considering Mr E's complaint for more than six months before our investigator issued his assessment. So I cannot conclude that it has had anything other than a reasonable period of time to provide us with any submissions that it wished to make, or to request more details about Mr E's circumstances upon which the investigator's assessment was based.

I note that, in its initial response to us, Sun Life said that Mr E's transfer hadn't been considered as part of the industry wide pensions review exercise. I accept that, more recently, it has said that the transfer might have been considered by that review. But it has provided us with no evidence showing that was the case. And as Sun Life will be aware, it was a regulatory requirement from the time for that evidence to be retained indefinitely. So given the lack of evidence that the transfer was considered as part of the review, I think it reasonable for me to conclude that the transfer wasn't included within that exercise.

The regulatory guidance that was in place in 1991 in relation to the transfer of defined pension benefits from an OPS was less prescriptive than we might see today. However, in July 1992 the regulator at the time, LAUTRO, set out the details of what it would expect to be discussed before a transfer was recommended. I accept that guidance was issued after Mr E's transfer took place. But as part of the guidance the regulator said that its guidance should also be applied to any investigations of past complaints. So I think the guidance is a reasonable basis upon which I should consider whether Sun Life met its obligations to Mr E.

The relevant guidance set out in detail the features of the DB scheme which needed to be discussed before recommending a transfer. It mentioned that the other options of doing nothing, transferring to a new employer's scheme or a section-32 plan should be given equal consideration. A full analysis of the benefits available was expected to demonstrate why these options had been ruled out.

The information that Sun Life has provided to us from the time is limited. It shows no information about the value, or future structure, of the defined benefits that Mr E was giving up. And so it shows no comparison, as would be expected by the regulator, of why a transfer might be in his best interests.

At the time the advice was given, Mr E was aged 26, and was transferring around six years' worth of pension benefits. The benefits being transferred are likely to have made up most, if not all, of Mr E's retirement savings at that time. He was working in a relatively low paid job, and had little in the way of other assets. He was renting his home, and said that he had little experience of other investments. He described his attitude to risk as being very low.

The advice was given during the period of the industry-wide Pensions Review, so the rates the regulator published for Financial Viability Tests are directly relevant here. But, as I said earlier, Sun Life hasn't provided any documentation showing what might be the critical yield required from the transferred monies to match the benefits being given up in the OPS.

The relevant discount rate that the regulator gave for a Financial Viability Test was 12.1% per year for a consumer with 33 years to retirement as was the case for Mr E's OPS benefits. And in fact, Sun Life suggested he might like to retire at age 50, so meaning that the relevant rate would potentially be far higher. For comparison, the regulator's upper projection rate at the time was 13%, the middle projection rate 10.75%, and the lower projection rate 8%.

I've taken this into account, along with the composition of assets in the discount rate, Mr E's probable attitude to risk as set out above, and also the term to retirement. I think Mr E 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 his attitude to risk.

I haven't seen any other persuasive reasons why it might have been appropriate for Mr E to transfer his pension benefits from the OPS into a personal pension plan. As I mentioned above, Sun Life's recommendation suggested that Mr E might want to retire earlier than that allowed by the OPS. But there was still a significant amount of time before even the earlier retirement date was reached. It might have been more appropriate, particularly given what I've said about Mr E's attitude to risk, and the potential investment returns, to leave his pension benefits within the safety of the OPS and to reconsider any retirement plans nearer to the proposed date.

Sun Life was required to show compelling reasons why Mr E should not be advised to leave his pension benefits in the OPS, and benefit from the guarantees that the scheme provided. It hasn't shown us those reasons in its response to this complaint, nor has it given any indication that information was provided to Mr E at the time the advice was given. As I explained above it seems unlikely that Mr E would have been materially better off as a result of the transfer.

So I don't think Sun Life should have advised Mr E to transfer his pension benefits from the OPS to a personal pension plan. It now needs to establish whether that advice means that Mr E has lost out, and if so to pay him the appropriate compensation.

## Putting things right

A fair and reasonable outcome would be for Sun Life to put Mr E, as far as possible, into the position he would now be in but for the unsuitable advice. I consider he would have likely remained in the occupational scheme.

Sun Life should therefore undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in Policy Statement PS22/13 and set out in the regulator's handbook in DISP App 4.

For clarity, Mr E took his pension benefits as a lump sum in 2019. So, compensation should be based on Mr E taking these benefits at this time.

This calculation should be carried out using the most recent financial assumptions in line with PS22/13 and DISP App 4. In accordance with the regulator's expectations, the calculation should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr E's acceptance.

If the redress calculation demonstrates a loss, as explained in PS22/13 and set out in DISP App 4, Sun Life should:

- calculate and offer Mr E redress as a cash lump sum payment,
- explain to Mr E before starting the redress calculation that:
  - redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
  - a straightforward way to invest the redress prudently is to use it to augment a current defined contribution pension
- offer to calculate how much of any redress Mr E receives could be used to augment a pension rather than receiving it all as a cash lump sum,
- if Mr E accepts Sun Life's offer to calculate how much of the redress could be augmented, request the necessary information and not charge Mr E for the calculation, even if he ultimately decides not to have any of the redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr E's end of year tax position.

Redress paid directly to Mr E as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, Sun Life may make a notional deduction to allow for income tax that would otherwise have been paid. Mr E's likely income tax rate in retirement is presumed to be 20%. However, if Mr E would have been able to take 25% tax-free cash from the benefits the cash payment represents, then this notional reduction may only be applied to 75% of the compensation, resulting in an overall notional deduction of 15%.

At this stage I cannot be sure how much, or whether, compensation will be due to Mr E. Where I uphold a complaint, I can award fair compensation of up to £170,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £170,000, I may recommend that the business pays the balance.

**Determination and money award:** I require Sun Life to pay Mr E the compensation amount as set out in the steps above, up to a maximum of £170,000.

**Recommendation:** If the compensation amount exceeds £170,000, I also recommend that Sun Life pays Mr E the balance.

If Mr E accepts this final decision, the money award is binding on Sun Life. My recommendation is not binding on Sun Life. Further, it's unlikely that Mr E can accept my decision and go to court to ask for the balance. Mr E may want to consider getting independent legal advice before deciding whether to accept this decision.

### **My final decision**

My final decision is that I uphold Mr E's complaint and direct Sun Life Assurance Company of Canada (U.K.) Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 25 July 2023.

Paul Reilly  
**Ombudsman**