

The complaint

Mr L complains that Sun Life Assurance Company of Canada (U.K.) Limited (Sun Life) gave him incorrect information about whether he would need to get sign-off from an Independent Financial Adviser (IFA) before he took the benefits from one of the two pension plans he held with it.

What happened

Mr L had two remaining pension plans with Sun Life. One had been set up on 7 September 1988, with a retirement date in 2027. This was worth around £78K at the time of the complaint. The other plan had been set up on 22 August 1988 with the same retirement date as the bigger plan. It had a value of around £26K at the time of the complaint.

Mr L told this service he'd also held another pension plan with Sun Life. I understand he took the benefits from that plan, without the need for financial advice, in 2012.

On 9 May 2023, Mr L contacted Sun Life to ask for the values of his pension plans and to request Retirement Packs for both of them. Sun Life confirmed both plans had Guaranteed Annuity Rates (GAR) and would need a GAR certificate. And that he could get 25% tax-free cash from each plan.

Sun Life issued Retirement Packs for both plans on 11 May 2023.

On 5 June 2023, Mr L called Sun Life to ask if he needed to get a signature from an IFA. Sun Life told him this wouldn't be required for the plan valued at less than £30,000.

On 6 June 2023, Sun Life received Mr L's completed pension questionnaire for the smaller of his two plans.

Sun Life realised a few days after the 5 June 2023 call that it had given Mr L incorrect information during the call. So it wrote to him on 20 June 2023. It said that as the total value of his plans exceeded £30,000, a Safeguarded Benefits Certificate would be required, even if he decided to only take his benefits from the smaller plan. And a financial adviser would need to sign it. It apologised for the incorrect information it'd given him.

Mr L called Sun Life on 21 June 2023 to complain about the incorrect information he'd been given. He was also unhappy that he'd have to wait for his complaint to be considered.

Sun Life issued its final response to the complaint on 4 July 2023. It acknowledged and apologised for the mistake it'd made during the call on 5 June 2023. It said that as the two plans' value exceeded £30,000, Mr L would need the certification. Sun Life offered him £150 compensation for the trouble and upset it'd caused.

Sun Life confirmed that both of Mr L's plans had a GAR, and both would need a certificate, even though one was valued at less than £30,000. It said that the Retirement Packs it'd issued on 11 May 2023 had contained the following wording:

Guaranteed Annuity Rate

If you transfer or take all of your pension savings as a lump sum, you will give up your Guaranteed Annuity Rate so you should think about this carefully. Even if you are not taking benefits from all your plans now, you need to talk to a financial adviser if you have pension savings with a Guaranteed Annuity Rate of more than £30,000 with us.

Sun Life said that as the total value of the two plans Mr L had held was greater than £30,000, it would still require a GAR certificate, even if he only took the benefits from the plan with a value below £30,000. It said this was because the Pension Schemes Act 2015, which had introduced Safeguarded Benefits, required a consumer to receive financial advice about whether to give up a GAR as it was a valuable Safeguarded Benefit. And that this was a legal requirement which it had to comply with unless the combined values of Mr L's plans fell below £30,000.

Sun Life also said that this service allowed it eight weeks to investigate a complaint.

Sun Life called Mr L on 10 July 2023 to discuss his complaint. Mr L told Sun Life he'd spoken to Pension Wise and an IFA. And that they had both told him he wouldn't need a certificate. Mr L asked for a copy of the law Sun Life had relied on to be issued to him.

Sun Life wrote to Mr L again on 14 July 2023 to confirm the regulations it had relied on. It said both plans had been set up under the same pension scheme. And that the regulations, as set out in section 48 of the Pension Schemes Act 2015, made it clear that the requirement to obtain regulated advice applies where a member has rights in excess of £30,000 in a registered pension scheme. It said it didn't matter that there were two plans in this case as Mr L's plans were both in the same scheme.

Our investigator acknowledged that Sun Life had given Mr L incorrect information on 5 June 2023. But she was satisfied that the two plans fell under the same scheme. And therefore that appropriate financial advice was required in this case as the total value of the two plans was more than £30,000, despite Mr L only wanting to access benefits from the plan that was valued at under £30,000.

Our investigator felt that Sun Life had taken reasonable steps to put things right when it'd quickly corrected the information and offered Mr L £150 for the distress and inconvenience it had caused.

Mr L didn't agree with our investigator. He said that other pension experts had led him to believe that Sun Life had interpreted the rules in this way, rather than taken this approach because it was required by law.

Mr L said he'd had another pension plan with Sun Life, which he'd been allowed to access the benefits of individually without taking financial advice. And that all three plans had been taken out on separate occasions. He felt they should've all been treated separately.

Our investigator asked Mr L to provide information about his third pension plan to demonstrate which pension scheme the plan was part of.

Mr L said he didn't have much information on the other plan. But as far as he could remember, all three plans were the same. He said he'd decided to cash in the other plan in 2012.

Our investigator also asked Sun Life to provide information about the other plan. To date, Sun Life hasn't provided any information on it.

Sun Life asked our investigator to clarify whether or not her view meant that she agreed with

its decision and offer of compensation. She explained that she'd upheld the complaint as Sun Life had made an error. But that she agreed with the suggested resolution. She further explained that if the ombudsman agreed with her view, the case would be recorded as no change in outcome.

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 agree with our investigator that Sun Life's offer of £150 compensation for the trouble and upset caused is fair under the circumstances of this complaint. I know this will be disappointing to Mr L. I'll explain the reasons for my decision.

Where a business has made an offer to settle a complaint – as Sun Life has done – what I have to decide is whether, in all the circumstances, that offer is fair and reasonable.

In this case, Sun Life has acknowledged that it gave Mr L incorrect information. But said that it had acted correctly in confirming to Mr L that he would need a certificate, even if he only took benefits from the plan which was worth less than £30,000. It said this was because both of his plans were part of the same scheme and therefore it had to consider the regulations against the combined value of the two plans. It offered Mr L £150 for the distress and inconvenience it had caused him.

Mr L doesn't agree with Sun Life that it has to consider the combined value of the plans. He thinks it's interpreted the law incorrectly. And that he should be allowed to take the benefits from the plan worth less than £30,000 without the need for certification.

I first considered whether Sun Life has correctly interpreted the legislation.

The legislation

Sun Life has confirmed that both of Mr L's remaining pension plans were held under the same pension scheme.

As both Sun Life and our investigator have explained, this means that, as the legislation requiring advice applies to pension schemes, rather than individual plans, and as both of the plans contain Safeguarded Benefits, certification is required regardless of whether Mr L wanted to transfer just the smaller plan or both plans. This is despite the smaller plan being valued below £30,000.

I acknowledge that Mr L doesn't agree. But I'm satisfied that Sun Life has correctly interpreted the legislation. So I can't reasonably require it to allow Mr L to take the benefits from his smaller plan without certification.

I next considered why Mr L was able to take the benefits from his other plan without the need for certification.

Mr L's other plan with Sun Life

Mr L said Sun Life had let him access the benefits of this plan without taking financial advice. So he felt he should also be able to take the benefits from his smaller remaining plan without taking financial advice.

Mr L hasn't provided a great deal of information on this other plan. But he did say that he'd decided to cash it in in 2012. Sun Life hasn't provided any information on this plan.

The government introduced changes to pension laws, including new pension freedoms, in April 2015. These were mainly under the following Acts:

- Part 4 of the Pension Schemes Act 2015
- The Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations 2015

The laws allowed people more flexibility in the way they accessed their pension benefits. But at the same time, the laws introduced some restrictions for people with Safeguarded Benefits which required them to take advice.

As I understand that Mr L accessed his other Sun Life pension plan benefits before the Pension Schemes Act 2015 came into force, it's not surprising that he was able to take the benefits from that plan without the need for certification. The requirement for such certification wasn't in place yet.

Therefore, I haven't seen any evidence that Sun Life made a mistake when it allowed Mr L to access the benefits from his other plan without the need for certification.

I finally considered whether Sun Life's offer of £150 compensation for the trouble and upset the incorrect information it caused was fair.

Distress and inconvenience

Between 5 June 2023 and 20 June 2023, Mr L thought he'd be able to access the benefits from his smaller plan without the need for an IFA signature. But this wasn't correct. As his benefits under one pension scheme exceeded £30,000, Mr L wasn't able to access the benefits of either of his two plans without certification. I consider that the 11 May 2023 Retirement Packs had also made this clear.

Mr L suffered a loss of expectation for about two weeks. I can understand that it would've been frustrating to find out that he couldn't do what he wanted to without certification, but, as I noted earlier, I'm satisfied that Sun Life has correctly interpreted the law here. So Mr L was never in a position where he could've accessed the benefits from his smaller plan without certification.

Sun Life has offered Mr L £150 compensation and said sorry for its error and the trouble and upset it has caused. As it corrected its error relatively quickly, and as Mr L is in the position he should've been in, I consider that this level of compensation is fair and reasonable.

As I understand that Sun Life has yet to pay the £150 compensation, I uphold this complaint. But I don't consider that Sun Life needs to improve its compensation offer.

Putting things right

I require Sun Life Assurance Company of Canada (U.K.) Limited to pay Mr L £150 compensation for the distress and inconvenience the incorrect information has caused him.

My final decision

For the reasons set out above, I uphold Mr L's complaint. I require Sun Life Assurance

Company of Canada (U.K.) Limited to pay Mr L £150 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 10 October 2023.

Jo Occleshaw
Ombudsman