

The complaint

Mr B complains that Sun Life Assurance Company of Canada (U.K.) Limited trading as Sun Life Financial of Canada (Sun Life) mis-sold him a personal pension policy when it should've advised him to join his Occupational Pension Scheme (OPS).

Mr B was advised to take out the personal pension covered in this complaint by a business which is now part of Sun Life, so it's responsible for the complaint.

Mr B has other complaints with Sun Life. But this complaint only refers to a specified personal pension policy. The additional issues Mr B raised in his submission to this service have either been raised as separate complaints with Sun Life or resolved.

What happened

Mr B has a number of personal pension policies which were sold to him by Sun Life. This complaint is about a policy he started in late 1991. I understand that this policy remained in force until 27 July 2021, when Mr B transferred the benefits to another provider. At the time, it was valued at £10,893.19.

Mr B said that a debt collector knocked on his door one night in 1991, looking for Mr B's ex-wife. He said that debt collector had another role as a Sun Life adviser. And that during the ensuing explanation about his separation from his ex-wife, the adviser had advised him not to join his OPS, as the Child Support Agency would confiscate the proceeds from the OPS at a later date.

Mr B said that the adviser told him he should start a personal pension instead. He said that the whole reason he'd got involved with Sun Life was because he was about to join his company pension.

Mr B said that his next Sun Life adviser told him that the first adviser had been dismissed for malpractice.

On the personal pension policy documentation from the time of the sale, a form Mr B appears to have completed said he worked for a business I'll refer to as business D. This business has subsequently changed name more than once. But at the time of the sale in October 1991 the business Mr B said he worked for wasn't actually called business D. I understand Mr B's employer had been bought by another business earlier in 1991 and that it had taken on the name of the purchaser. But the paperwork from the personal pension sale refers to business D.

Mr B said that he was eligible to join his employer's OPS at the time of the advice. But that every time he mentioned this to Sun Life advisers between October 1991 and 1995 - when he said a manager had virtually insisted he joined the OPS - he was strongly advised that the personal pension was his best option.

Mr B said that after a recent financial review, he'd been advised to raise some complaints with Sun Life. And to seek financial redress over various personal pensions it'd sold him

between 1991 and 1995. So he complained to Sun Life on 28 July 2022. He said he'd been told that he'd receive better returns with a Sun Life personal pension than his OPS.

Mr B listed a number of pension plans in his original complaint. He asked Sun Life to compensate him for the financial losses he'd suffered due to their mis-sale.

Sun Life wrote to Mr B a number of times to tell him it was still considering his complaint. And on 14 December 2022, it wrote to him again to say it was still investigating what'd happened. It apologised for taking longer than expected. And said it'd write to Mr B once it'd finished investigating his complaint. It also provided referral rights to this service.

Mr B brought his complaint to this service on 21 December 2022. He said that when he'd decided to consolidate his pensions in 2021, he'd received Cash Equivalent Transfer Values (CETVs) from two company pensions. And that the value of these was far in excess of the Sun Life personal pension values. This led him to consider that he'd been misled into thinking the purchase of a personal pension was more favourable than joining his employer's OPS at the time of the sale. Mr B feels Sun Life should've advised him to join his OPS. And that if it had, he would've been better off.

On 8 February 2023, Sun Life told this service that its paperwork showed that two of the personal pension policies Mr B had complained about had been reviewed under the Pension Review. It said it was waiting to confirm this through a review of the archived Pension Review files, which it'd requested. It later confirmed that two of the policies complained about had already been considered in the Pension Review in 2001. And that Mr B had agreed to the redress offered. Mr B acknowledged that his complaint about two of the policies in his original complaint had been previously addressed.

Sun Life issued its final response to the complaint on 13 February 2023. It didn't uphold the complaint. It said that when Mr B's policy had started in October 1991, he was 29, and employed by business D earning £21,600 each year. But it said that the records showed that his employment had been on a non-pensionable basis. So he hadn't had the option of joining the OPS at the time of the sale.

As such, Sun Life felt that the sale of the personal pension policy in October 1991 had been appropriate for his circumstances. And had met Mr B's needs at the time.

Mr B replied to Sun Life on 22 February 2023 as he didn't feel it had considered all of his complaint points. He felt that he shouldn't have started the personal pension policy in 1991. And that he should've been advised to join his OPS, which he said he had been eligible to join. He said that he did join that OPS in 1995. And that an August 2021 CETV for the benefits he'd accrued whilst a member of that scheme was £92K, which was many times more valuable than the amount his personal pension policy had realised.

Mr B said he received no reply to his 22 February 2023 email, which he sent again on 27 March 2023.

Our investigator asked Mr B for evidence of his eligibility to join his OPS at the time of the advice in 1991.

Our investigator noted that parts of Mr B's complaint might be out of time. But on 4 May 2023 Sun Life gave this service its consent to considering the merits of this complaint.

Both Mr B and Sun Life have confirmed to this service that they don't have any additional documentation about the personal pension policy sale, or copies of any correspondence between Mr B and his advisers between 1991 and 1995.

Our investigator felt that the complaint should be upheld. He felt Mr B should've been advised to join his employer's OPS in August 1991. He said that the initial financial analysis document dated 16 August 1991 had stated that Mr B was eligible to join his employer's OPS. And had noted that he: "*may take up company plan later on*". Given this, he felt the adviser should've discussed the OPS with Mr B and found out why he hadn't yet joined. But he'd seen no evidence that such discussions had taken place.

To put things right, our investigator felt that Sun Life should put Mr B, as far as possible into the position he would now be in but for the unsuitable advice. He felt Mr B would've joined his employer's OPS. And that Sun Life should therefore undertake a redress calculation in line with the pension review methodology for opt-out/non-joiners of money purchase schemes. Our investigator also felt that Sun Life should pay Mr B £150 compensation for the loss of expectation he'd experienced when he compared the value of his personal pension policy in 2021 with the CETVs provided by his OPSs.

Mr B accepted our investigator's findings. Sun Life asked for an ombudsman review, but provided no additional rationale for its request.

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

I asked Mr B to provide the paperwork for the CETV he said he'd received in August 2021. This showed that he joined his then employer's Final Salary OPS on 1 September 1995 and left it on 30 December 1996. But I wasn't satisfied that I'd seen enough evidence that the Final Salary OPS Mr B joined in 1995 was the same one that he could've joined in 1991. So I asked him if he could provide further evidence of the OPS he could've joined in 1991. I also wanted to understand if he would've been eligible to join the OPS at that time.

With information from former colleagues, who had retained records relating to the pension plans and the dates that they were applicable, Mr B explained the following:

- Although business D had been bought by another business in early 1991, its OPS wasn't rolled into the new business's pension until 1993. The business D pension was a Money Purchase arrangement.
- He'd joined business D in January 1988. He hadn't at this time joined the OPS because money was very tight as he had a new mortgage and new family.
- But in late 1990 his marriage broke up and he divorced the following year. He said at this point he was determined to put his financial future back on a firm footing and to join his company OPS. But unfortunately this is when the debt collector knocked on his door and advised him not to.
- Business D had operated a Final Salary OPS. But this changed to a Money Purchase OPS in 1989. Mr B's former colleague said that scheme continued until 1 June 1994, when its members joined the OPS of the business which bought business D in early 1991.

Mr B hasn't been able to provide any details about the contributions he might've been required to pay in the OPS.

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 going to uphold it. I agree with our investigator that the pension policy was mis-sold. I'll explain the reasons for my decision.

I first considered whether the advice was suitable.

Was the advice suitable?

Sun Life provided the documents from the time of the sale of Mr B's pension policy on 21 October 1991. These documents recorded his employer at the point of sale as business D, not the business which had bought business D in early 1991. They also include a copy of a payslip from business D dated 16 October 1991.

Sun Life's initial financial analysis document dated 16 August 1991 stated that Mr B was eligible to join his employer's OPS and that he "*may take up company plan later on*".

I understand that the fact that the documents from the time of the sale recorded business D as Mr B's employer forms at least part of the basis for Sun Life's rejection of the complaint.

But I'm more persuaded by Mr B's evidence that he did actually work for the purchaser of business D at the time of the advice and that he was eligible to join the OPS of that employer.

I say this because Mr B provided the following testimony to this service, which I'm satisfied shows that a simple mistake was made on the policy documentation when business D was stated as Mr B's current employer, rather than the purchaser of business D:

- When he completed the policy documentation, it was a pressured environment with a lot of things being required of him at once. So either he made a mistake when he wrote the previous name of his employer on the documentation, or someone else incorrectly completed that part of the form on his behalf.
- At the time of the advice he had three colleagues on the same pay and employment conditions who are still colleagues today. All three were eligible and did enrol into the OPS with the purchaser of business D – the name he'd included on the policy documentation in 1991. Mr B said he is sure that like his colleagues, he was also eligible to join the OPS at the time. And that the only reason he didn't join his OPS in 1991 was because of the advice he'd received.
- Mr B provided evidence that business D had been bought by the business whose OPS he'd joined in 1995 on 2 April 1991, six months before he'd completed the policy documentation. And said that he'd worked for business D before the sale of the business, and then the purchaser of that business thereafter. He said business D no longer existed after the purchase.
- Mr B wrote to the person he said was his former Divisional Director in 1991 at the purchaser of business D. And that person then wrote to the Company Secretary of that purchaser. Mr B then provided email evidence from those former colleagues that he was employed by the purchaser of business D at the time of the sale, rather than business D. And that he was eligible to join the purchaser's plan.

Our investigator shared this evidence with Sun Life. And asked it for its thoughts on whether Mr B should've been advised to purchase a personal pension rather than join his OPS under the circumstances.

Sun Life asked our investigator if Mr B could provide some form of documentation, for

example, his contract of employment from the time of the advice, before it would consider this evidence. But Mr B hasn't been able to obtain any such documentation.

From the information Mr B has provided, including the additional information he provided this service with after our investigator issued his view, I'm satisfied that he was eligible to join the business D OPS at the time of the advice. And that the OPS was a Money Purchase scheme.

Mr B hasn't been able to provide any contribution details for the OPS. So I can't assess whether such contributions would've been affordable. But I consider it's unlikely that Mr B wouldn't have been able to afford membership. I say this because Mr B could clearly afford some pension contributions. And because I consider it unlikely that business D's OPS would've required a high level of employee contributions to join.

I've also got no information on how much business D would've contributed into the OPS on Mr B's behalf. But I think it's reasonable to assume that it would've made contributions on behalf of its employees.

I acknowledge that Sun Life made a reasonable request when it asked for further documentary evidence before considering the testimonial evidence Mr B has provided. But I'm satisfied that Mr B has done all he can to evidence that he was in fact working for the purchaser of business D at the time of the sale. And that he was eligible to join the Money Purchase OPS that was still on available to him.

And, regardless of the fact that Sun Life isn't yet comfortable enough with Mr B's testimony to conclude that he was eligible to join his employer's OPS at the time of the advice, I'm satisfied that the initial financial analysis document dated 16 August 1991 evidenced that Mr B's employer at the time of the advice offered an OPS which he was eligible to join.

I agree with our investigator that it would be reasonable to expect the adviser to have discussed this OPS with Mr B. And to find out why he hadn't yet joined it. We'd expect the adviser to question why Mr B had made that decision, and who else might have influenced him to do that. Failing to do so wouldn't be acting in Mr B's best interests, given that there was another product that would better meet his needs. But I've not been given any documentary or testimonial evidence that such discussions took place. And Mr B said he was considering joining his employer's OPS at the time. And would've done so if he'd not been advised that he'd be better off starting a personal pension.

Overall, I'm satisfied that Mr B should've been advised to join his employer's OPS in August 1991. I say this because I'm of the view that the OPS would've offered lower charges than the personal pension policy, and because Mr B would've benefitted from his employer's contributions to the OPS. I also say this because I'm persuaded that the evidence shows that Mr B was eligible to join his employer's OPS, and was actively considering doing so until he was advised otherwise. Therefore I don't consider that the advice to start a personal pension policy, rather than join the OPS, was suitable.

I next considered whether any compensation for distress and inconvenience was suitable in this case.

Distress and inconvenience

Mr B told this service that until he'd received CETVs for his OPSs in 2021, he hadn't realised just how much he'd been mis-sold. He also felt that Sun Life had been slow to handle his complaint. And that it had failed to consider some parts of it. He felt Sun Life had treated him as unfairly as is possible. And that it had no intention of putting things right.

As I noted earlier, Sun Life has acknowledged that it didn't address all of Mr B's complaint in its February 2023 final response letter. And it is separately investigating his outstanding complaints. So I won't consider those here.

However, I agree with our investigator that Sun Life should pay Mr B £150 compensation for the loss of expectation he experienced when he compared the value of his personal pension policy in 2021 with the CETVs provided by his OPSs. I say this because it must've been shocking to find out that his personal pensions might've been mis-sold.

Putting things right

My conclusion is that a fair outcome would be for Sun Life to put Mr B, as far as possible, into the position he would now be in but for the unsuitable advice. I consider he would've joined the occupational scheme. Sun Life should therefore undertake a redress calculation in line with the pension review methodology for opt-out/non-joiners of money purchase schemes.

This calculation should be carried out using the most recent financial assumptions where relevant at the date of my final decision.

Sun Life may wish to contact the Department for Work and Pensions (DWP) to obtain Mr B's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P) so that it can better take into account any impact of joining the occupational scheme on Mr B's SERPS/S2P entitlement.

If the calculation in line with this methodology demonstrates a loss, the compensation amount should if possible be paid into Mr 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 Mr 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've been taken as tax-free cash and 75% would've been taxed according to his 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 compensation amount must where possible be paid to Mr B within 90 days of the date Sun Life receives notification of his 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 Mr B.

Income tax may be payable on any interest paid. If Sun Life deducts income tax from the interest, it should tell Mr B how much has been taken off. Sun Life should give Mr B a tax deduction certificate in respect of interest if he asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

It's possible that gathering information regarding Mr B's SERPS/S2P entitlement may mean that the actual time taken to settle goes beyond the above 90-day period – 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

I uphold the complaint. My decision is that Sun Life Assurance Company of Canada (U.K.) Limited trading as Sun Life Financial of Canada must pay the amount calculated as set out above.

Sun Life Assurance Company of Canada (U.K.) Limited trading as Sun Life Financial of Canada should provide details of its calculation to Mr B in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 8 November 2023.

Jo Occleshaw
Ombudsman