

The complaint

Mrs B complains that Sun Life Assurance Company of Canada (U.K.) Limited trading as Sun Life Financial of Canada (Sun Life) hasn't increased her annuity payments correctly. Sun Life said it'd only been able to legally increase her annuity income by 5% each year after a 2006 legislation change. And that before this date, it could only increase the pension by the greater of 3% or RPI each year. Mrs B considers that the 2006 legislation change should be retroactively applied back to 1992.

Mrs B is represented in her complaint. But I'll only refer to her in my decision.

The annuity policy at the heart of this complaint was purchased from a business which is now part of Sun Life. So it's responsible for the complaint. And I'll only refer to it in my decision.

What happened

Mrs B purchased a Sun Life annuity in 1992. The documentation issued at the time confirmed a 5% annual escalation rate. It was signed and dated by Mrs B on 13 February 1992.

The policy documents showed that Mrs B's Maximum Annuity Amount, under Inland Revenue (IR) restrictions in place at that time, was £4,266.67 each year. And that this would be increased over time with reference to the rise in the Retail Prices Index (RPI):

"The Maximum Annuity Amount on any one Increase Date shall be £4,266.72 per annum increased by the proportional rise in the Index of Retail Prices for the period from the Base RPI Month to the RPI Month immediately preceding that Increase Date".

The "Increase Date" was defined as: "any date at yearly intervals from the 1 April 1992". And the "Base RPI Month" for the policy was set as February 1992, with the "RPI Month" being February.

IR limits at the time the annuity was purchased restricted increases on pensions in payment to the greater of 3% or the increase in the RPI.

The policy documents also stated:

"On any Increase Date the amount of annuity per annum payable shall be the lower of the amount payable in accordance with the "Escalation" provision and the "Maximum Annuity Amount" on that Increase Date".

The "Escalation" provision stated:

"The amount stated within this policy will increase on each anniversary at a rate of 5% per annum."

The annuity policy also contained a provision, from when the policy was set up, as follows:

“Provision forming part of the policy to which it is attached

Annuity Escalation Restriction - The annuity shall increase in accordance with the “Escalation” provision of this policy, except that, at the request of the Owner by written notice prior to the date of any increase in the amount of annuity, this annuity to be payable on that increase date shall be restricted to such amount as prescribed by that notice and any subsequent increase in the amount of annuity, as prescribed within the “Escalation” provision, after such a restriction shall apply to that restricted amount of annuity.”

Therefore, although the policy specified that the annuity would increase at 5% each year, it required the increase to be restricted by the “*Maximum Annuity Amount*”. And also required any subsequent increase to the annuity to be applied to the “*restricted amount of annuity*”.

Sun Life wrote to Mrs B about the annuity purchase on 13 April 1992. It sent her its net cheque for £457.21. This was based on pre-tax payments of £163.18 for the period from 18 to 31 March 1992 and £354.53 for the month of April 1992. The letter said that subsequent monthly payments would be paid directly into Mrs B’s bank account.

Sun Life wrote to Mrs B, through her financial adviser, on 20 July 1994. It said that the annuity would have a restriction applied as it couldn’t increase by more than the RPI because Mrs B was on IR maximum benefits. It said the current level was £369.43 per month. It asked Mrs B’s IFA to ensure it agreed with its action.

Sun Life also said that it had developed a contract that specifically addressed the issue of restrictions and future payments should the level of RPI increase. It said that under that contract, it would continue to restrict the pension, but if the RPI increased to a level above the chosen escalation rate it would pay above that rate (but not an amount greater than the RPI amount) in an attempt to “catch-up” the annuity to a level it could’ve been had no restriction occurred. It said if Mrs B agreed it would amend the contract to the basis described and issue the appropriate endorsement.

Mrs B signed and dated her acceptance of the new contract on 16 August 1994. And on 23 August 1994, her IFA sent her agreement to Sun Life, stating she wished to alter her pension as outlined.

On 28 August 2008, Sun Life wrote to Mrs B. It said that new legislation, known as pension simplification, had come into force from April 2006. This removed the cap on pension increases. So it said it would now be allowed to increase her pension by 5% each year going forward.

Sun Life also said that it’d found an error that affected the way it’d paid her pension in the past. It said that before 6 April 2006, increases to Mrs B’s pension had been restricted to the greater of 3% and RPI. But that when the RPI had been less than 3% in the 1990s, it had increased her pension by less than 3% in error.

Sun Life apologised and carried out a loss calculation. To put things right, it paid Mrs B the additional pension she should’ve received - £1,756.38 net of tax, plus £362.64 net of tax in interest. It said that the annual annuity payment with effect from 1 April 2007 would be £6,841.96 and from 1 April 2008 it would be £7,184.05.

On 21 November 2022, Mrs B’s representative called Sun Life to ask for a copy of her original policy. He also asked for statements showing all payments since the start date. He emailed Sun Life on 28 November 2022 with the same request. And for any subsequent changes to the policy, with the dates those changes were agreed. He said Mrs B had been under the impression that the pension was to increase at 5% each year, but it hadn’t, so he

wanted to know why. He asked Sun Life to let him know when it would be able to provide him with the information he needed.

Mrs B's representative chased Sun Life for a response on 8 December 2022. On 12 December 2022, he called Sun Life for an update. He then emailed it to say he was still waiting for his request to be met.

Sun Life sent Mrs B's representative a holding email on 13 December 2022. And said sorry for the delay in replying. It said it'd requested a copy of the paperwork and that it would contact him when it had an update.

Mrs B's representative chased Sun Life again on 15 December 2022. It acknowledged his complaint on 16 December 2022.

Mrs B's representative wrote again to Sun Life on 21 December 2022. He said he wasn't clear when he'd receive a copy of Mrs B's pension contract, despite having asked for it on 21 November 2022. He clarified his complaint as follows:

- It'd taken Sun Life too long to provide the requested policy document.
- Sun Life hadn't told Mrs B's representative when he might get the document.
- He was concerned that Mrs B's pension hadn't increased as it should've done.

On 21 December 2022, Sun Life's complaints department called Mrs B's representative. It apologised that it hadn't yet covered off all of his complaint points. And said that it'd received some documentation that day which was being reviewed. Sun Life wrote to Mrs B's representative the same day with the policy documentation. It said this confirmed that it increased by 5% on 1 April each year.

Sun Life also said that an arrears payment of £1,756.38 net of tax had been paid on 26 August 2008 in respect of an underpayment made in previous years. And that a further net payment of £362.64 had been paid on 1 September 2008 in respect of interest due.

Mrs B's representative wrote to Sun Life again on 28 December 2022. He said that the policy documentation showed the starting value of the pension and that it would increase at 5% each year. He calculated that an annual pension of £17,465.09 should've been paid after 29 years' escalation at 5%. But that Sun Life's information showed that only £13,603.12 was paid at that time. He wanted Sun Life to make up the shortfall and correct the annual payments going forward.

Mrs B's representative also said he wasn't clear what the arrears payments Sun Life had mentioned were in respect of. And asked it to provide a list of annual gross payments since the start of the policy.

Sun Life said it tried unsuccessfully to call Mrs B's representative on 6 January 2023. And on 12 January 2023 it emailed him to say it was still investigating the complaint.

On 17 January 2023, Mrs B's representative wrote to Sun Life again to chase a response to his complaint. He said he accepted that recent increases had been at the rate of 5%. But that his concern was that Mrs B's pension hadn't increased in line with the policy documentation. He said that another of Mrs B's pensions, which started at a similar time to this pension, had been paid in line with an increase of 5% each year from the start of the pension.

Sun Life called Mrs B's representative on 24 January 2023. It told him it was waiting for information from a different area about the payments from 1992 to 2000. It called him again on 31 January 2023 to tell him it was still waiting the figures.

Mrs B's representative wrote to Sun Life on 31 January 2023. He said there were two issues, which he summarised as follows:

- Sun Life would provide him with an explanation about what increases should've been applied to the policy since the start. It had told him that there was a period of time when increases were limited to 3% by government regulation. And he'd asked Sun Life to put in writing what specific period the reduction to 3% related to, the specific government regulations relied upon, and why the change in the law that was advised in 2006 shouldn't be backdated to the start of the policy.
- He wanted Sun Life to provide an annual list of payments since the start of the policy. He understood it was having problems getting this information, but felt it didn't need to wait for it to address the first issue.

Mrs B's representative called Sun Life again on 7 February 2023. Its complaints department returned his call. Sun Life told Mrs B's representative that it was still waiting for, but was proactively chasing, the requested information. And that it would respond to him as soon as it could. Mrs B's representative was very disappointed with the continued delay and with Sun Life's approach.

Sun Life sent Mrs B's representative a holding email on 9 February 2023 as it said it was still investigating what'd happened. It apologised that this was taking longer than expected. But said it was committed to answering all of his points. It provided referral rights to this service.

Unhappy with Sun Life's progress, Mrs B's representative brought her complaint to this service on 13 February 2023. He wanted Sun Life to pay her the correct pension and make good any shortfall in previous years.

Our investigator asked Sun Life to provide its file for the complaint as soon as possible given Mrs B is a vulnerable consumer. Sun Life told this service that it'd hadn't yet been able to provide its final response as the investigation was ongoing. It said some of the payments dated back to 1992 and had been paid by another of its offices, so it was working with them to retrieve the historic information it needed to provide a thorough and full response to the complaint. It also confirmed that the complaint was being treated as a priority, but given the complexity of the case, it was taking more time than it had hoped.

Sun Life issued its final response to the complaint on 11 April 2023. It apologised for the delay in responding to the complaint and queries. And offered £100 compensation. But it didn't consider that the annuity payments were incorrect.

Sun Life said that pension simplification legislation, introduced in April 2006, had introduced a number of pension changes. One of the changes was to remove the cap on increases to pensions in payment. It said it had consulted legal counsel at the time and had been advised that its intended approach was appropriate given the legislative changes being implemented. So its customers had been placed in the correct financial position.

Sun Life acknowledged that another of Mrs B's pension providers had, following the legislation change in 2006, applied backdated elective increases to the start of her policy with them. But said it couldn't comment on the approach they'd taken. It said its approach was in line with the regulations at that time. And that the elected 5% increase couldn't be applied whilst the restrictions were in place. It said it had only been able to apply the elected

5% increases after the legislative change in 2006. It confirmed that the pension in payment reflected this approach.

Mrs B's representative said he wouldn't accept the £100 compensation offered. He replied to Sun Life's final response letter. He made the following points:

- Sun Life hadn't said which increases had been applied each year to the policy since the start.
- It hadn't provided the specific government regulation which it had relied on to reduce the annual increase. Or why the removal of the cap in 2006 shouldn't have been back dated to the start of the policy to provide the annuity that was actually purchased. He didn't think it was fair for Sun Life to refer to following advice at the time if it didn't know what that was or what it had done. So it couldn't know if the advice it said it had followed was correct.
- He expected Sun Life to still have the information he'd requested, as he expected it to hold on to pensions information for extended periods of time.
- He still wanted a full response to the questions he'd raised on 31 January 2023.

Mrs B's representative also made the following points to this service:

- Mrs B had purchased an annuity with a 5% escalation, but the payments hadn't been in line with that throughout the course of the policy. Mrs B's representative felt that the correct payments from now on, based on a 5% escalation, could be worked out from the annuity paid from the start and then applying a 5% escalation over the intervening period.
- He didn't agree with Sun Life that government legislation didn't allow the correct payments to be made now. He said other annuities from the same time had increased at 5% from the start.
- He said Mrs B's care costs were no longer covered by her pensions. And that the delayed response to his complaint didn't help.

Mrs B's representative asked this service to continue its investigation on her behalf. He felt that Sun Life was avoiding dealing with the issue. He wanted it to provide him with the specific government regulation it'd relied on and how it had applied it to the policy, so he could check whether it had been done correctly.

Sun Life gave this service permission to consider the complaint.

Our investigator issued her view on the complaint on 24 July 2023. She felt that Sun Life had acted fairly and in line with the law at the time. So she didn't think it should do anything further.

On 10 August 2023, our investigator shared a copy of the 1994 letter Sun Life had sent Mrs B's IFA with Mrs B's representative.

Mrs B's representative didn't agree with our investigator. He made the following points:

- The paperwork connected with the purchase of the annuity clearly showed that the rate of escalation was 5%. So he felt it was clear that Mrs B had entered into a contract to receive an annuity paying a 5% escalation.

- The July 1994 letter to Mrs B's IFA had said that although an annuity with an escalation rate of 5% had been purchased, it wasn't possible to pay out the full amount because Mrs B was on Revenue Maximum benefits. He understood that the rate of escalation was restricted from then until 2006 to 3% or RPI which ever was greater.
- But the law changed in 2006 to remove the restriction on the amount of the annuity that could be paid. So he felt Sun Life should pay out a pension from 2006 onwards that represented a 5% escalation since the start in 1992. He said that although our investigator said it would be against the law for Sun Life to do so, she hadn't referenced any law. And Sun Life had also been unable to provide any reason why it wasn't paying out the annuity as purchased, despite stating it had taken advice at the time. He said that as a different pension provider had agreed to pay 5% escalation retrospectively, he felt the evidence showed that it wasn't against the law to pay out the full value of the annuity for 2006 onwards.
- Mrs B's representative felt that all payments since 2006 had been about 22% lower than the annuity value. To resolve the complaint, he wanted Sun Life to make payments in line with the contract that was entered into in 1992. And to make good the payment shortfall between 2006 and now.

On 31 August 2023, our investigator repeated her request for more information from Sun Life. She still wanted it to provide the following for the Ombudsman to review:

- The specific legal name of the law that changed in 2006.
- The previous relevant law which supported the annuity originally not being escalated by 5% since 1992.

Mrs B's representative's comments didn't change our investigator's view. As agreement couldn't be reached, the complaint came to me for a review.

I issued my provisional decision on 13 September 2023. It said:

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

Having done so, I intend to uphold it. While I agree with our investigator that Sun Life has paid the correct pension increases, I have different reasons from her for this view. And I don't agree that Sun Life's offer of compensation for the distress and inconvenience it has caused is reasonable under the circumstances. I'll explain the reasons for my decision.

As our investigator noted, there's no dispute that Mrs B's annuity hasn't increased by 5% each year between 1992 and 2006. What is in dispute is whether Sun Life has paid Mrs B's annuity in line with the policy conditions by not applying the 5% increases throughout.

I first considered whether Sun Life had paid Mrs B the correct pension increases.

Has Sun Life paid the correct pension increases over time?

Before pension simplification came into force from 1 April 2006, a pensions increase cap applied to Mrs B's pension. Her annuity had started at a level which was a little lower than that cap - her IR maximum. But by 1994, it had increased to a point where the next annual 5% escalation would take her annuity over her cap.

From this point on, Sun Life was required to ensure that Mrs B's annuity increased in line with IR limits, which restricted those increases to the greater of 3% or the increase in the RPI. The policy documentation explained what would happen in this case. So Sun Life wrote to Mrs B through her IFA in 1994 to tell her that her annuity would be restricted.

I'm satisfied that Sun Life acted in line with the annuity policy provision: Annuity Escalation Restriction. This required any increase to be restricted by the "Maximum Annuity Amount". And, once the annuity had been restricted, the policy provision also required any subsequent increase to the annuity to apply to "that restricted amount of annuity", rather than what the annuity would've been worth if 5% increases had been added each year.

So I'm satisfied that the original contract didn't allow Sun Life to choose to repay any amounts that had been restricted earlier in the policy. It specified that if benefits had to be restricted, subsequent increases must be based on the restricted amount.

I appreciate that Sun Life has referred to government regulation causing the restriction. And that Mrs B's representative has repeatedly asked it to clarify which laws restricted Mrs B's pension increases. But it was the combined effect of the IR maximum limits and the policy provisions that led to the increases Mrs B has had applied to her annuity.

Sun Life's July 1994 letter offered Mrs B a contract that it said specifically addressed the issue of restrictions and future payments should the level of RPI increase.

I don't have any details about that contract, other than those in the July 1994 letter. However, the letter stated that under that contract, the pension would continue to be restricted as before, but if the RPI increased to a level above 5%, Sun Life would pay that rate in an attempt to "catch-up" the annuity to a level it could've been had no restriction occurred. Mrs B chose the amended contract Sun Life had offered.

I've reviewed the annual rates of increase in the RPI between February to February from 23 August 2004, when Mrs B accepted the new contract, and 28 August 2008, when Sun Life wrote to her to tell her it could now pay the 5% escalation rate without restriction. At no point did this rate increase at more than the original 5% escalation rate. Therefore, based on the evidence I have, Mrs B's annuity wouldn't have been eligible for any "catch-up" payments during this period. And I've seen no evidence that Sun Life has applied incorrect increases over this period.

Sun Life confirmed in its 28 August 2008 letter that from 6 April 2006, 5% escalations were no longer restricted. I understand that it has effectively paid 5% annual increases since then.

Overall, I'm satisfied that Sun Life increased Mrs B's annuity in line with the original contract terms and the amended contract terms Mrs B agreed to in 1994. I say this because I've seen no evidence that Sun Life hasn't paid the correct pension increases over time.

I next considered the fact that another of Mrs B's pension providers decided to retroactively apply the full increases after pension simplification came in.

Other pension providers made good the historical increases

Mrs B's representative said that another of Mrs B's pensions, which started at a similar time to this pension, had increased at 5% each year from the start of the pension.

Sun Life acknowledged this point. But said that it couldn't comment on the approach that'd been taken.

I can't fairly ask Sun Life to retrospectively apply the 5% increases, regardless of what another provider may have done. I say this because I have no way of knowing the circumstances, including the policy terms and conditions, that applied in the other case.

All I can say is that, based on my review of the evidence, Sun Life has acted in line with the policy documentation.

I next considered the distress and inconvenience that Sun Life has caused Mrs B. And whether its offer of £100 compensation was fair.

Distress and Inconvenience

I don't have the power to award any distress and inconvenience compensation to Mrs B's representative, as he's not an eligible complainant in his own right. But I can award it to Mrs B, for the distress the complaint has caused her.

Mrs B's representative said he was upset because Mrs B's annuity payments no longer covered her costs. So I can understand why he wanted to ensure that the correct payments were being made. I can see why he'd want this to be confirmed quickly.

Mrs B's representative first complained to Sun Life in December 2022. He'd waited a month for a copy of Mrs B's policy document. And Sun Life hadn't been able to tell him when he might receive it. He was concerned that Mrs B's pension hadn't increased as it should've done. Given Mrs B needed that pension urgently, he needed a timely response.

Sun Life wrote to Mrs B's representative in December 2022 to explain an historical correction to Mrs B's pension payments. But I don't consider that it provided enough context for Mrs B's representative to be clear what the arrears payment was for.

Mrs B's representative has also asked Sun Life for other information about the policy on 31 January 2023. Some of this has been provided, but some remains outstanding several months after the initial request, despite a number of chasers.

Sun Life didn't issue its final response to the complaint until April 2023. But its response still didn't cover the points Mrs B's representative had asked it to cover in January 2023.

Sun Life has acknowledged there was a delay in providing the policy documents and an explanation about the annuity increases. It said this was due to the historical nature of the information and the fact that it needed to be retrieved from its files. But I consider Sun Life could've provided Mrs B's representative with a fuller response, that addressed most of his complaint points, and therefore provided reassurance that the annuity payments had been correct, much sooner than it did.

Mrs B's representative has repeatedly asked Sun Life for evidence of the government legislation it relied on to reject Mrs B's complaint. This service has also requested this information on more than one occasion. But it hasn't provided this. I think it should've been able to provide Mrs B's representative with at least the kind of information I've brought together in this decision. And I think it should've been able to do this much sooner.

Mrs B's representative has also asked Sun Life to share the legal advice it said it'd taken to confirm it had acted correctly. Without it, he didn't feel it had been able to provide any verifiable reasons for not paying out the annuity in full. I can see why he felt this way.

I consider that Sun Life should've responded to Mrs B's representative in a much more complete and timely manner. If it had done so, I consider it would've saved Mrs B a lot of

distress about whether she was being paid the correct amount of pension.

Sun Life offered Mrs B £100 compensation due to the length of time it took to respond to the requests and the complaint. Given the amount of additional delay Mrs B has had to endure while waiting for the information her representative requested, I don't consider Sun Life's offer is fair.

In light of the additional delays in responding to Mrs B's complaint, I intend to ask Sun Life to increase its compensation for distress and inconvenience to £300.

In summary, I've seen no evidence that Sun Life has failed to pay the correct pension increases to Mrs B. But I consider that it took too long to respond to various requests and complaints about the annuity. And I consider that it could've been clearer in its responses. If it had been, I'm satisfied it would've caused less distress to Mrs B.

Therefore I intend to uphold the complaint. And I intend to ask Sun Life to pay Mrs B £300 compensation for the distress and inconvenience it has caused her.

Response to my provisional decision

Sun Life didn't respond to my provisional decision.

Mrs B's representative said he now accepted that the current payment regime was correct. He noted that he had only recently received a copy of the policy document. And that if Sun Life had sent him a copy when he requested it last November, all this investigation could've been prevented. He felt that Sun Life had taken an obstructive approach to resolving his complaint.

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.

As no new information has come to light, I remain of the view I set out in my provisional decision.

Putting things right

What I require Sun Life Assurance Company of Canada (U.K.) Limited trading as Sun Life Financial of Canada to do

I require Sun Life Assurance Company of Canada (U.K.) Limited trading as Sun Life Financial of Canada to pay Mrs B £300 for the distress caused.

My final decision

For the reasons set out above, I uphold Mrs B's complaint. Sun Life Assurance Company of Canada (U.K.) Limited trading as Sun Life Financial of Canada must pay Mrs B £300 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 30 October 2023.

Jo Occleshaw
Ombudsman

