DRN-4286062

The complaint

Mr B complains, via a professional representative, about a transfer of pension benefits from a defined-benefit ('DB') occupational pension scheme to a personal pension. He says he was advised to transfer, and he believes that advice was unsuitable for him and has potentially caused him a financial loss.

Mr B says the advice was given by a business which Sun Life Assurance Company of Canada (U.K.) Limited is now responsible for answering complaints about. For ease of reading this decision, I'll largely just refer to 'Sun Life' throughout.

What happened

I've seen evidence that Mr B first dealt with Sun Life in February 1989, when he opened a personal pension with it. At that time Sun Life recorded that he was 36, employed, married with two dependent children. His selected retirement age for the new pension was 65. In addition to the pension he was setting up at the time, it was noted that Mr B had two other pensions, from previous employment.

A confidential review document was completed by Sun Life in May 1991 when it met again with Mr B. Mr B was 38 at that point. The review document said *"a pension fund transfer only"* was required and Mr B "*wished to have a full review of his affairs at a later date*". It said Mr B "*preferred to sign a negative review at this stage*" and the adviser was to *"recontact this client when this transfer has been completed"*. His selected retirement age was still 65.

Mr B signed a declaration that said he'd received a business card and buyers guide from Sun Life and confirmed *"that I / we have withheld relevant information and therefore accept that best advice may not be given".* There was a section of the review for 'managers comments' which again noted the phrase "*negative review*" and said Mr B had been shown illustrations of his existing pension and a new personal pension and he had elected to transfer.

An additional information section again said a full comparison had been made of the estimated benefits of Mr B's existing pension and a new personal pension and included some of the figures compared. The existing pension was named as one of the two existing pensions that were noted in 1989. An application was completed at the same time for a transfer to a new personal pension. Sun Life's records indicate this pension started on 3 July 1991.

In October 1994, the then regulator, the Securities and Investment Board, set up an industry-wide review of certain types of advice that was given between 29 April 1988 and 30 June 1994. It was generally known as the 'Pension Review'. It aimed to address concerns about the possible widespread mis-selling of personal pension plans between these dates.
Sun Life sent Mr B a questionnaire to complete in 1996 in relation to the pension review.
Sun Life wrote to Mr B in July 1996 and said, the information he'd provided indicated he hadn't left or failed to join an employer's pension scheme in favour of the policy he now held. So, it didn't intend to review the matter further and his pension does not appear to have been included in the pension review at that point.

Mr B transferred his pensions to a different provider in July 2000.

Mr B's representatives complained to Sun Life on his behalf in 2022. They said Mr B thought the pension he'd been advised to take in 1991 was not as beneficial as his original pension and that he'd been negligently advised to transfer.

The complaint was subsequently referred to the Financial Ombudsman Service. Mr B's representatives added that he was advised to transfer because he'd receive a higher pension at retirement, he hadn't been informed of the risks of transferring and he hadn't been given time to consider the advice. It also said comparisons hadn't been shared with Mr B and the adviser had not gotten back in touch with him.

Sun Life did not uphold the complaint. It said its records around the pension review indicated Mr B hadn't transferred from a DB scheme. And, due to the time that had passed it held very few records from the time of sale. So, it said it couldn't investigate his concerns or establish that it had made an error. It did though dispute that it hadn't provided him a comparison to consider, as details of this were included in the confidential review document that was still available. And on the point of the adviser not following up with Mr B, while again this couldn't be confirmed, it noted Mr B had been in fairly regular discussion with the adviser from 1989 to 1991, so said it was satisfied if Mr B needed further assistance, he could've contacted the adviser.

Mr B provided confirmation from his former employer that his previous pension was a DB scheme.

One of our Investigator's considered the complaint but didn't think it should be upheld. She was satisfied that the available documents indicated that Sun Life had discussed a transfer of benefits with Mr B and had provided comparisons. And that the ceding scheme was a DB pension. But she said she couldn't reasonably conclude that Sun Life had recommended a transfer. Mr B had completed a declaration acknowledging Sun Life may not be able to provide best advice due to information not being provided. The comparisons indicated, while a personal pension was likely to provide more tax-free cash, the annual pension was likely to be higher under the existing scheme. But the documents had said Mr B required a fund transfer. And the references to a negative review, suggested that a transfer was against Sun Life's recommendation, but Mr B had chosen to proceed. So, on balance, she didn't think she could reasonably conclude Sun Life had provided unsuitable advice.

Mr B's representatives did not agree. They said Mr B believed Sun Life had advised him to transfer and he didn't think he noticed the declaration about withholding information. His representative also said that the comparison notes were unclear and may have actually suggested a personal pension would be more beneficial – which it said was misleading because the existing scheme was a DB pension.

The investigator wasn't persuaded to change their opinion, so the complaint was referred to me to make a final decision.

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.

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 the advice was given. It isn't appropriate to apply today's regulations retrospectively. And I need to be clear I'm looking at what happened when the transfer took place, based on the wider circumstances at the time – not if a transfer was suitable based on what we now know and the rules that apply today.

The events complained about took place over 32 years ago. And the information from the time is very limited as neither party has retained a great deal of documentation. I don't think that is unreasonable, particularly as Mr B seems to have moved his pensions with Sun Life to another provider in 2000 – 23 years ago. Where evidence is incomplete, inconclusive or contradictory, I must reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

I'm satisfied that Mr B took out a new pension policy with Sun Life in 1991 and that he appears to have transferred the benefits from a DB scheme from a period of previous employment. And the documents confirm he had a discussion with Sun Life, when applying for that new policy.

At the time, based on the information I've seen, I'm satisfied the adviser was a member of the Life Assurance and Unit Trust Regulatory Organisation (LAUTRO). The rules set by LAUTRO in relation to selling practices would therefore have applied. These included that Sun Life needed to give 'best advice' which included not making inaccurate criticisms of other options and not advising he transfer unless Sun Life believed it to be in Mr B's best interests.

But the documents from the time also say Mr B accepted that best advice may not be given here, because not all of the necessary information had been provided. This suggests to me that a recommendation may not have been given by Sun Life, particularly when considering the suggestion of a "transfer only" being required and a full review of circumstances not having taken place and being planned for later. I'd also note that, at that time, Mr B was not required to take advice in order to make such a transfer.

Mr B has said he doesn't think he noticed that declaration at the time. But given how long ago this all happened, I wouldn't expect him to remember this in any detail. And on balance, I think what he signed – which was one of two distinct options – likely reflected the discussion that took place.

I also think the documents from the time suggest that, if advice was given on a limited information basis, a transfer may not have been recommended by Sun Life.

A comparison was recorded between the existing scheme benefits and those that a personal pension could potentially offer. These indicated that a personal pension was likely to provide greater tax-free cash at the normal scheme retirement date. But they also indicate that the annual pension available through the existing scheme was estimated to be greater than that of a personal pension. It was noted that this was shown to Mr B, which he signed to confirm. But he chose to transfer to a new personal pension.

The document also confirmed that Mr B preferred, at that time, to sign a "negative review". This was noted in the section prior to the declaration Mr B signed about understanding best advice may not be given. And this was repeated later again in the managers review notes. A negative review is not defined in the documentation. But taking this, the comparison and Mr B's noted preference for a transfer only, a review at a later date and to proceed at that time into account, on balance I think it appears that he was likely acting against Sun Life's advice to proceed, if it provided advice.

Mr B has said that he was told by Sun Life he'd be better off if he transferred and that was why he went ahead. But again, this all took place over three decades ago. Memories can and do fade and can for that reason, particularly after such a long time, be unreliable. I wouldn't expect Mr B to recall the meeting or application in any great detail. And, given he had set up another pension with Sun Life, shortly prior to this transfer, he could be confusing a positive recommendation he received at that time with this discussion.

Mr B's representatives have said the comparison, which is handwritten, includes a mark which could be additional information – specifically another digit that would mean the estimated annual pension from a personal pension was in fact higher than that of the DB scheme. So, it believes this supports that Sun Life did recommend a transfer and that the comparison must be misleading, because Mr B was giving up a DB scheme which is of greater value.

Firstly, I don't think the mark on the copy documentation is enough to say that the estimated benefits of the personal pension were higher – particularly bearing in mind what I've said about the other factors suggesting Mr B had potentially acted against Sun Life's advice. But in any event, even if the comparison did suggest benefits might be higher under a personal pension, I don't agree with Mr B's representative that this means they were clearly incorrect.

The investment climate today is very different to that which existed at the time of the advice here. So, what may have been reasonable assumptions at the time around potential for growth are likely to be different to those that would be made now. With hindsight those past assumptions may appear to be inaccurate. But at the time of the advice, they were reasonable. For example, the industry standard growth projections were much higher than they are today – the upper projection rate was 13%, middle rate 10.75% and lower rate 8.5%. The regulator also published rates for Financial Viability Tests, as this transfer took place during the period of the industry-wide Pensions Review. And the upper limit the regulator gave for a Financial Viability Test was 12.9%, based on Mr B's age and him retiring at age 65. So, I don't agree that projections showing a potential improvement of benefits by transferring were automatically misleading, given the climate at the time.

Mr B's representatives have said Sun Life did not contact him again after the transfer, as the documents indicated it would. Again, given how long ago this all happened, its possible that Sun Life did speak to Mr B again, but he has since forgotten. But if it didn't, he wasn't prevented from contacting it instead. And in any event, even if a follow up after the advice didn't take place, I don't think that means Sun Life has made an error in respect of the transfer itself.

Taking everything into account, while I know this will come as a disappointment to Mr B, I can't reasonably say on balance, based on the evidence and information I've seen that Sun Life gave him unsuitable advice here. So, I don't require Sun Life to take any action.

My final decision

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 27 October 2023.

Ben Stoker
Ombudsman