

The complaint

Mr G complains about the performance of his Sun Life Assurance Company of Canada (U.K.) Limited trading as Sun Life Financial of Canada pension plan. He says the plan has performed poorly and so he feels the plan was mis-sold to him.

What happened

In 1989 Mr G took out a personal pension plan with Sun Life.

In 2006 Mr G raised a complaint with Sun Life as he was concerned about the investment performance of his plan. On 1 February 2006 Sun Life sent Mr G a response to his complaint which included referral rights to our Service.

In July 2023 Mr G again complained to Sun Life about the performance of his plan. Mr G told Sun Life that he had a comparable pension plan with another firm which had returned far greater funds than his Sun Life plan.

In response, Sun Life said the plan hadn't been mis-sold to Mr G as it was suitable for him in his circumstances in 1989. They went on to say Mr G's plan was invested in unit-linked funds the value of which is linked to the performance of underlying investments held in the fund.

Sun Life explained that in recent years there have been several events that have affected market performance such as Covid, the war in Ukraine and Brexit. They said they'd looked into the performance of Mr G's plan in 2006 and addressed his concerns then. Sun Life included a copy of their response from 2006.

Mr G was unhappy with Sun Life's response to his complaint, so he brought it to our Service. Our investigator didn't think our service could look into whether Mr G's complaint was mis-sold as he'd made his complaint too late. They explained that the rules say Mr G needed to complain within three years of being aware of a cause for complaint. And his complaint in 2006 demonstrated Mr G was unhappy with the plan more than three years before he complained in 2023.

Our investigator also didn't think our service could comment on the performance of Mr G's complaint prior to his 2006 complaint as he hadn't referred that complaint to our service in time. However, our investigator said we could consider a complaint about the performance of Mr G's pension since 2006. But having considered the information provided, he didn't think there was any evidence Sun Life had mis-managed his plan in any way.

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.

I know this will come as a disappointment to Mr G but for the reasons I'll now explain, I'm not upholding his complaint against Sun Life.

For ease, I've separated Mr G's complaint into three distinct points.

The sale of Mr G's plan

Before we can consider the substance of any complaint brought to us, we first need to be satisfied that it's one we have the authority to consider. That includes ensuring the complaint has been brought to us within the timescales set out in the Dispute Resolution Rules (DISP) which we're bound by.

The relevant rule here is DISP 2.8.2R. It says that consumers are able to complain about an event that's happened within six years of making their complaint. Or, if complaining later than that, within three years of the point at which the consumer was aware, or ought to have been aware, of a cause for complaint.

We can only look into complaints made outside of this time period if the business consents to us doing so or we're satisfied there are exceptional circumstances that prevented the complaint from being made sooner. In this case Sun Life hasn't consented to us looking into things.

The event Mr G complains about is the sale of his personal pension in 1989 which is clearly more than six years before he complained to Sun Life in 2023.

I then need to decide when Mr G became aware (or ought to have become aware) of a cause for complaint.

The crux of Mr G's complaint is that he's unhappy with the value of his pension plan as he feels it has performed badly. So, he thinks it was mis-sold.

But in 2006 it's clear Mr G was already unhappy with the performance and value of his plan. So, he had the same cause for complaint in 2006 as he did in 2023 and therefore ought reasonably to have had cause to complain about the plan's sale in 2006.

Mr G didn't complain about the sale of his plan within 3 years of 2006, so our service doesn't have the authority to consider the merits of a mis-sale complaint.

Performance of the plan pre-2006

Mr G complained to Sun Life about the performance of his plan in 2006.

On 1 February 2006 Sun Life explained that they investigated Mr G's complaint. They provided an explanation and told Mr G that if he was unhappy with their answers, he could refer his complaint to our Service – but he had to do so within six months of the date of that letter. That's consistent with the rules set out in DISP 2.8.2R.

I've seen no evidence that Mr G referred his complaint about the performance of his plan within six months of Sun Life's response to his complaint in 2006. So, our service doesn't have the jurisdiction to consider Mr G's complaint about any performance of his plan prior to his complaint in 2006 as he's brought that complaint to us too late.

Performance of the plan post-2006

While our Service can't consider the performance of Mr G's plan pre-2006, he's remained a customer of Sun Life since that date. And as a customer of Sun Life, invested in two of their funds, Mr G is eligible to complain about Sun Life's actions.

I appreciate Mr G is disappointed with the returns of his Sun Life plan. Especially as he says he saw better returns on a similar plan from another business. But in order to uphold this complaint I'd need to be satisfied that Sun Life made an error in the way they'd managed Mr G's plan or funds.

Sun Life is accountable to the regulator – the Financial Conduct Authority - for the way they manage their funds. I'm not aware the regulator has found any problems or raised any concerns about how Sun Life has managed the funds Mr G is invested in.

Mr G's invested in unit linked funds that are subject to fluctuations dependant on the underlying investments. Investment performance is dependent on the financial markets, and not something that a business like Sun Life can predict or control, therefore it's not something that I can hold Sun Life accountable for.

While the value of the plan hasn't met Mr G's expectations, I've seen no evidence that Mr G's plan held any guarantees as to what it's value would be when Mr G came to retirement age. And I've also seen no evidence Mr G was told that it did.

As I've seen no evidence that Sun Life have mismanaged Mr G's pension, I can't reasonably say that Sun Life have treated Mr G unfairly or made any errors in the way his pension has been managed. Therefore, I'm not upholding Mr G's complaint about the recent performance of his plan.

My final decision

My final decision is, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 19 January 2024.

Timothy Wilkes
Ombudsman