DRN-4691517

Financial Ombudsman Service

The complaint

Mr C says Sun Life Assurance Company of Canada (U.K.) Limited (Sun Life) provided him with unsuitable advice to take out a personal pension plan as a means of paying off his mortgage, using the tax-free cash (TFC) lump sum to do this.

Mr C is represented by TTP Financial Compensation (TTP).

What happened

From the information provided by both parties we know that at the time of Sun Life's advice to Mr C to set up a personal pension in 1995, he was 37, married, and employed as a design draughtsman. His employer didn't provide a workplace pension scheme.

Mr C accepted Sun Life's recommendation to set-up a pension plan. This also provided life cover of £150,000 that would run until his scheme retirement date.

Mr C received further advice in 1997. His prioritised objectives at that time are recorded as: family protection; critical illness/permanent disability cover; and pensions.

Mr C switched his personal pension to another provider in 2003.

TPP says Mr C only became aware of a cause for concern after it carried out a review of the sales of several policies he held with Sun Life in 2021. He contacted it in response to an advertising campaign aimed at people who had dealings with Lincoln (one of Sun Life's predecessor firms).

TPP had three main concerns about what had happened in 1995. It said the personal pension plan was recommended as a means of paying off Mr C's mortgage, using any TFC available for this. It says there's no evidence he was informed about the alternatives. It says it's not clear he was told about what would happen if the policy failed to deliver sufficient funds to cover his mortgage. It also says he wasn't told that if he joined an employer's pension scheme he wouldn't be able to contribute to the policy.

Sun Life said at the time its consultant had to provide Mr C with a plan that suited his needs. It considered the available evidence and came to the conclusion a personal pension was appropriate for him and in keeping with his likely objectives to provide for his retirement in the absence of an employer scheme. Sun Life didn't accept the pension was set up to repay his mortgage based on the facts that were available.

On Mr C's behalf, TPP disagreed and referred his complaint to this Service. An Investigator reviewed the evidence and concluded Sun Life hadn't done anything wrong. It disagreed and focussed on one of the Investigator's findings:

"You state that 'There's no evidence that this pension was taken out to repay the mortgage', so I presume SLFC have not sent you the recommendation paperwork from 1997 when the client topped up his pension. Please find the relevant documentation attached, and I would therefore request that you review your initial conclusion."

The Investigator responded in the following terms:

"The additional information shows only that it was an intention to build up his pension and use the tax free cash to repay his mortgage (presumably along with the endowments) but also to provide an income in retirement. Therefore whilst I do take on board your point, this additional information which shows that Mr C was increasing his contributions indicates that this was affordable and that two years after setting up his pension [he] was still happy with his decision and the advice he had received."

TPP still disagreed, but it didn't provide any new evidence or arguments. As both parties couldn't agree with the Investigator's view, Mr C's complaint has been passed to me to review afresh and to provide a 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.

I've not provided a detailed response to all the points raised in this case. That's deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I've taken into account all submissions, I've concentrated my findings on what I think is relevant and at the heart of this complaint.

I'm not upholding Mr C's complaint. I'll explain why.

While I'm mindful the approach taken by firms and the regulations governing them have evolved considerably over the last quarter of a century, companies like Sun Life still had to adhere to the relevant industry codes and standards.

The advice relevant to this case was provided by Sun Life in 1995. At this time, it was regulated by the Personal Investment Authority (PIA). Sun Life was a previous member of the Life Assurance and Unit Trust Regulatory Organisation (LAUTRO). And when the PIA took responsibility for these firms in 1994, it adopted the LAUTRO rules.

The LAUTRO rules included a Code of Conduct at Schedule 2. This required advisers to exercise due skill, care and diligence and deal fairly with investors. Paragraph 6 of the Code of Conduct required advisers to give 'best advice', which included that they should not:

- Make inaccurate or unfair criticisms of other investments, or of any occupational or state pension; or
- Advise the investor to convert, cancel or allow to lapse any investment contract, occupational or state pension, unless they genuinely believed it to be in the consumer's best interests and clearly disclosed all relevant consequences and disadvantages.

TPP says Sun Life should've advised Mr C about the alternatives to taking out his personal pension; the potential for any TFC from the plan to be insufficient to pay-off his mortgage; and that if he joined an employer pension he would need to stop making contributions to his Sun Life plan.

The events complained about happened nearly 30 years ago. I don't have all the information I'd like from the time Sun Life advised Mr C to take out his personal pension. It says this is in part due to the fact he switched away from his plan in 2003, twenty years prior to raising a complaint.

Where there's conflicting information about events and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what's most likely to have happened.

While I think it's reasonable to conclude Mr C would've found the potential access to TFC from his pension when he was able to take his benefits attractive, and that he had helping to pay off his mortgage in mind, considering his circumstances and objectives around the time, I don't think this was the be-all and end-all of his reasoning for accepting Sun Life's advice to establish a personal pension. He already had several endowment policies in place as the main mechanism for meeting his mortgage repayment obligations.

I can't know what Mr C and Sun Life discussed in 1995. I can't be certain that he was informed that should he join an employer's scheme that at the time he would've had to halt contributions to his personal pension plan. And I don't know if discussions took place about how he might pay off his mortgage in the event there was a shortfall from his endowment policies and what he could realise from his pension TFC.

However, it's rare this Service would say recommending someone makes provision for an income in retirement is unsuitable advice, subject to the particular circumstances. It's a tax efficient way of providing for the future and generally a prudent thing to do. Given Mr C's age at the time and the fact his employer didn't offer a pension scheme, I've concluded the recommendation to take out the plan in 1995 was more likely than not suitable.

My conclusion here is strengthened when I also consider that in 1997 Mr C received further financial advice and it was recommended he increase contributions to his personal pension plan. I note from the documentation available providing for a pension was one of his priority objectives.

Mr C had many priorities including protecting his family in the event of his ill health or passing. The fact his personal pension arrangement also offered him life assurance cover until retirement would've been another benefit I think he found attractive.

TPP asserts a number of arguments on Mr C's behalf, but it hasn't been able to provide evidence of a telling nature to support these. Based on the information I've seen, I think it's more likely than not Sun Life adhered to the regulatory requirements it was required to follow at the time.

My final decision

For the reasons I've set out, I'm not upholding Mr C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 6 August 2024.
Kevin Williamson
Ombudsman