

Ombudsman's Determination

Applicant	Mrs N
Scheme	Sun Life Financial of Canada Personal Pension Plan (the Plan)
Respondents	Sun Life Financial of Canada (Sun Life)

Outcome

1. Mrs N's complaint is partly upheld. To put matters right Sun Life shall pay Mrs N an additional £425 to recognise the significant distress and inconvenience its maladministration has caused.

Complaint summary

2. Mrs N complained about two personal pension plans (**the policies**) which she held with Sun Life. She said she was wrongly told the policies attracted no bonuses and based on this, transferred her benefits to another pension arrangement.

Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
4. Mrs N had two personal pension policies with Sun Life; policies 163-XXX-X3 and 163-XXX-X9. The policies were originally established with Lincoln Financial Group (**Lincoln**) in 1999, who were subsequently (in 2009) bought by Sun Life.
5. On 6 August 2004, Lincoln wrote to Mrs N with details of the policies, including the transfer value. Regarding each of the policies, Lincoln said, "This policy may benefit from loyalty bonuses payable on retirement or maturity. Further details are available in the terms and conditions or on request."
6. On 10 May 2007, Lincoln wrote to Mrs N about the policies. In this letter Lincoln said, "I can confirm that a loyalty bonus will be applicable if the policies are vested after your nominated retirement age of 50. You must have paid annual premiums of at least £180.00 for the last 5 years prior to your nominated retirement date. The amount of loyalty bonus is calculated on the number of years you have been paying premiums and the fund value of the policy at the time of vesting."

7. On 14 August 2018, in response to a telephone call from Mrs N on 9 August 2018, Sun Life sent her a copy of the terms and conditions (**T & Cs**) which applied to the policies.
8. On 13 September 2018, Sun Life wrote to Mrs N in response to a telephone enquiry from her, giving details of available pension options. One of the options in the letter was a full transfer of her policies to another provider. Within the letter it was also stated:

“None of the policies mentioned in this letter have a Loyalty bonus associated with them.”
9. Based on the information in this letter, Mrs N said she decided to transfer the funds to a Self-Invested Personal Pension (**SIPP**) with another provider, Interactive Investor.
10. On 29 November 2019, Sun Life received a transfer request from Interactive Investor.
11. On 2 December 2019, Sun Life transferred the policies to Mrs N’s Interactive Investor SIPP. It confirmed this in letters to Mrs N on 3 December 2019, which included a breakdown of the total values transferred and the loyalty bonuses included:
 - The value of policy 163-XXX-X9 transferred to Mrs N’s SIPP was £36,812.21 which included £2,301.84 loyalty bonus.
 - The value of policy 163-XXX-X3 transferred to Mrs N’s SIPP was £30,830.88 which included £1,927.83 loyalty bonus.
12. On 2 March 2020, Mrs N made a complaint to Sun Life by telephone regarding the letter she had received dated 13 September 2018.
13. In March 2020, in response to her complaint, Sun Life telephoned Mrs N. She could only speak briefly due to work commitments and arranged an alternative time for it call back. Sun Life telephoned again in the following days; Mrs N missed the call. Sun Life did not leave her a voicemail message.
14. On 31 March 2020, Sun Life responded to Mrs N’s complaint. It partly upheld her complaint. It said its letter of 13 September 2018, had incorrectly stated that none of her pensions had any loyalty bonuses associated with them. In recognition of this error, it enclosed a cheque for £75. However, it said Mrs N should have contacted it immediately upon receipt of its letter of 3 December 2019, if she was not happy with the transfer amounts. For this reason, it rejected this aspect of the complaint.
15. Mrs N was not happy with this response or offer and so lodged a complaint with Sun Life
16. On 23 April 2020, Sun Life responded to Mrs N. It said she if she had contacted it immediately it could have reversed the transfer and accepted the funds back. It said:

“Financial firms normally provide you with the chance to ‘change your mind’ this is what is known as the ‘cooling-off period’. Cooling off periods last between 14 and 30

calendar days, depending on the product. Firms may apply longer cooling off periods although they must make clear if any additional conditions apply. Did Interactive Investor SIPP not provide you with the option to cancel?"

17. In July 2020, Mrs N made a complaint to The Pensions Ombudsman (**TPO**).
18. Sun Life provided TPO with a copy of the T & Cs it said were sent to Mrs N on 14 August 2018, which set out that bonuses were payable on Mrs N's policies and provided details of how they would be calculated.

Mrs N's position

19. She made her initial enquiry about loyalty bonuses in order to decide where to invest her total monthly pension contributions of £1,266 and consolidate her various pensions.
20. Had she known about the loyalty bonuses on the policies, she would not have transferred the policies out. She would have invested £1,266 per month for the 23 years until her retirement date with Sun Life, which she calculated to be £349,599.
21. She would also have transferred her other pension policies worth approximately £250,000, to Sun Life.
22. A 10% loyalty bonus, which she believes the policies attract, on the above, would be substantial, and she feels the offer of £75 is dismissive.
23. She could not respond to the letters of 3 December 2019, which she received on 12 December 2019, earlier than 2 March 2020, due to work pressures in the run up to Christmas. Sun Life do not offer email or online connection, only an 8am to 6pm telephone line.
24. At the beginning of 2020, her personal circumstances changed and additional work responsibilities addressing the Covid-19 pandemic meant she was working 60-70 hours a week and so was not able to telephone Sun Life between 8am and 6pm. She received a telephone call in March 2020 from Sun Life but needed to suggest an alternative time due to work meetings. If Sun Life telephoned her again in the following days, it did not leave her a voicemail message.

Sun Life's position

25. It incorrectly stated in a letter of 13 September 2018, that the policies had no loyalty bonuses associated to them. It apologised for this error and made a £75 distress and inconvenience payment to Mrs N.
26. Had Mrs N contacted it sooner, within 30 days of the transfer, it may have been in a position to accept the funds back.
27. It tried to contact Mrs N to establish if there were any mitigating circumstances why she did not contact it earlier. On the first telephone call it was not convenient for Mrs N to speak so an alternative time was arranged for the following day. It

telephoned at this time and there was no answer. It telephoned again the next day but was again unsuccessful.

28. Mrs N's Sun Life pension policies cannot accept any transfers in. This was also the case in 2019. Sun Life has been closed to new business since 2001.
29. It would not notify Mrs N of a 'cooling off period' as she had shown an intent to transfer out. The 'cooling off period' would apply to the receiving scheme and Sun Life would accept back the funds if a mistake had been made with the transfer.
30. Mrs N was provided with the correct T & Cs at the time of the sale. The loyalty bonuses were confirmed in its letter of 10 May 2007 and alluded to in its letter of 6 August 2004.

Adjudicator's Opinion

31. Mrs N's complaint was considered by one of our Adjudicators who concluded that no further action was required by Sun Life. The Adjudicator's findings are summarised below:
 - In August 2018, Mrs N received a copy of the T & Cs. The T & Cs stated that the policies did have loyalty bonuses associated with them, and gave details of how these bonuses were calculated. In the Adjudicator's opinion, had Mrs N taken the decision to transfer out her policies to her SIPP based on the lack of loyalty bonuses, it was reasonable to expect that she would have queried this discrepancy before proceeding with the transfer.
 - Mrs N said she would also have transferred all her other pension plans to Sun Life had she known that the policies attracted a loyalty bonus. Sun Life confirmed that this was not possible as it closed to new business in 2001 so it could not have accepted the transfer in of her other pension funds. In the Adjudicator's opinion, that Mrs N was not aware that Sun Life was closed for new pension business, indicated that she had not begun to investigate transferring her other pensions to Sun Life.
 - One of the elements of a claim for negligent misstatement is that the claimant must show that it was reasonable for them to have relied on the incorrect representation. In the Adjudicator's opinion Mrs N would find it difficult to argue that it was reasonable for her to base a financial decision on the letter of 13 September 2018, when read in conjunction with the T & Cs which she was provided with one month earlier. It was therefore the Adjudicator's view that Mrs N's claim for redress on the basis of negligent misstatement was unlikely to succeed on this basis.
 - The loyalty bonus, payable upon transfer or retirement, was 0.33% of the policies' fund values for each complete year in which the minimum contribution is paid, up to a maximum of 15%. At the time of the transfer, this amounted to 6.66% added to the policies. While this is not a small amount, in the Adjudicator's view it was not significant enough to influence Mrs N to take the action claimed. On the balance of

probabilities, Mrs N would still have proceeded with the transfer of her policies to her SIPP if the letter of 13 September 2018 had contained the correct information.

- Even if it had been reasonable for Mrs N to rely on the 13 September 2018 letter when deciding to transfer out the policies, there is no evidence that she has made a loss as a result of these transfers. The difference in the future performance of Mrs N's SIPP cannot be compared with the future performance of the policies, either with or without the loyalty bonus. Nor can assumptions be made about how many more years Mrs N would have made the minimum contribution to the policies before transferring out or retiring. Mrs N is referring to a possible future loss rather than actual loss.
 - Mrs N gave reasons why she took no action to mitigate what she perceives as a loss until three months after the transfers were made. The provider of Mrs N's SIPP, Interactive Investor, as the receiving scheme, were obliged to make her aware that she had a 30 day 'cooling off period' to cancel the transfer¹. Mrs N did not say that she attempted to do so. Had she done so the transfer could have been cancelled.
 - Sun Life were not under any obligation to notify Mrs N of any 'cooling off period', nor would it have been obliged to accept the funds back and reverse the transfer unless a mistake had been made. It is agreed by both parties that Sun Life did attempt to contact Mrs N in March 2020, on several occasions when she made it aware she was unhappy with aspects of the transfer but it was unsuccessful. Mrs N has not said she made further attempts to contact Sun Life at this time.
 - In the Adjudicator's opinion, Mrs N failed to adequately mitigate her perceived loss. Once she learned that the policies had loyalty bonuses which had been transferred to her SIPP, she could have sought to reverse the transfer, if she had acted within 30 days. While the Adjudicator sympathised with Mrs N's work situation, particularly as a result of the pandemic, in his opinion, she would be expected to have contacted Sun Life or Interactive Investor much sooner if she had wished to stop the transfer. While Mrs N may not have been able to telephone during their opening hours, she could have contacted Interactive Investor by email or letter, or Sun Life by letter.
 - In the Adjudicator's view, Sun Life's offer of a payment of £75 for the distress and inconvenience the error had caused to Mrs N was reasonable.
32. Mrs N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs N provided her further comments which are summarised below:
- The T & Cs which referred to bonuses were not the T & Cs which were sent to her on 14 August 2018. She received a different version which made no reference to bonuses and has provided a copy of this.

¹ <https://www.handbook.fca.org.uk/handbook/COBS/15/2.html>

- The letters received from Lincoln on 6 August 2004 and 10 May 2007, only refer to “potential bonus” and that is why she contacted Sun Life in 2018 to confirm if there were actual bonuses or not.
 - She was never advised that Sun Life closed for new business in 2001.
 - She cannot understand or accept how a company can be this inept and not face any form of regulatory discipline.
 - She feels favour has always sat with the pension company and not the pension scheme member.
33. Sun Life was asked for its comments about the T & Cs, which Mrs N said were sent to her on 14 August 2018, and also the level of the distress and inconvenience payment made to her. Sun Life responded as follows:
- It did not dispute these were the T & Cs sent to Mrs N at that time but offered no explanation for providing the incorrect information.
 - Mrs N would have been provided with the relevant T & Cs when her plan was sold (by Lincoln) and these included reference to the loyalty bonuses. It provided a copy of the T & Cs that would have been sent at the time of the sale, which include the following section:

“14. Loyalty Bonus

(a) Subject to this Condition the Annuity Fund will be increased by the Loyalty Bonus

(i) On the retirement of the Member, or

(ii) On reaching Normal Retirement Date or

(iii) On the transfer of the policy under Condition 23c [Commutation]

(b) The Loyalty Bonus will be an amount equal to one third of 1 per cent of the Annuity Fund multiplied by the number of policy years for which a premium of not less than £180 (or such other amount as the company may determine for the purpose of this condition) has been paid, subject to a maximum of 45 years counting for this purpose.”
 - The loyalty bonuses were positively confirmed in Lincoln’s [10 May] 2007 letter and were alluded to in many other letters, including the one from [6 August] 2004. For these reasons, Mrs N cannot claim she was not aware of the loyalty bonuses on her plans and it does not consider that a higher award for any distress and inconvenience caused is warranted.
34. I have considered the additional points raised by Mrs N and Sun Life, and agree with the Adjudicator’s Opinion except that, given Sun Life’s failure to provide Mrs N with

the correct T & Cs in 2018, I consider that the distress and inconvenience award should be increased to £500.

Ombudsman's decision

35. There is no dispute that the T & Cs Mrs N was provided with on 14 August 2018 were not applicable to the policies and therefore misinformed her that loyalty bonuses would not be applied.
36. Sun Life contend that the correct T & Cs would have been sent to Mrs N at the time of the sale of the policies and that these stated the circumstances in which loyalty bonuses were payable. It also said that the letters dated 6 August 2004 and 10 May 2007, clearly stated that loyalty bonuses were payable. While I accept that was likely the case that does not negate the fact that at the time Mrs N was considering transferring her policies many years later Sun Life provided her with incorrect information which amounts to maladministration.
37. However, I can see no adequate reason for the delay in Mrs N attempting to mitigate the perceived loss she has said she might experience. Had she contacted her SIPP provider within 30 days of the transfer, the transfer could have been cancelled. Sun Life cannot be held responsible that she did not do so.
38. 81 days elapsed between the date Mrs N said she received the letters detailing the transfer of the policies to her SIPP and the date she contacted Sun Life to raise a concern. When she did so, Sun Life made reasonable attempts to contact her to discuss the matter. It made telephone calls on three different days to Mrs N, including one at an agreed time. Unfortunately, Mrs N was not available to discuss her concerns with Sun Life on any of these occasions. Mrs N has not said she made further attempts to contact Sun Life in order to discuss the matter.
39. I appreciate that Mrs N was very busy with her work commitments at this time, but I would have expected her to have contacted Interactive Investor or Sun Life much earlier if reversing the transfer to retain the bonuses was important to her.
40. Mrs N said that Sun Life should face regulatory discipline due to the errors she has experienced. My role is not to punish the organisation that has been complained about, nor can I impose a penalty or take sanctions against it. I am not a regulator, I can only consider whether there has been any financial or non-financial injustice caused as a result of maladministration and, if so, make directions to put matters right.
41. TPO is an impartial service, and we must carry out a fair investigation taking into account evidence provided by all parties to the complaint. I appreciate why the outcome causes Mrs N to feel that favour sits with Sun Life rather than her. However, greater weight has not been given to the evidence of one party over the other.
42. While I acknowledge that Mrs N might have wanted to know that Sun Life was closed for new business, she in fact did not become a customer of Sun Life until 2009 when

it bought Lincoln. Sun Life would therefore have had no reason to notify her about decisions made in 2001.

43. Sun Life's letter of 13 September 2018, was misleading and contained incorrect information about the bonuses on her policies. The misinformation within this letter amounts to maladministration and I have re-visited the award for non-financial injustice sustained as a consequence of the error.
44. Sun Life paid Mrs N £75 for the distress and inconvenience caused to her by its error. My awards for non-financial injustice are intended to acknowledge the distress and inconvenience that an applicant has suffered as a result of maladministration. I find the payment of £75 from Sun Life is insufficient and in my view, Mrs N will have suffered significant distress and inconvenience as a result of Sun Life's maladministration for which Sun Life should pay £500 (to include the £75 already paid to Mrs N).
45. I partly uphold Mrs N's complaint.

Directions

46. Within 28 days of the date of this Determination, Sun Life shall pay Mrs N an additional £425 in respect of the significant distress and inconvenience she has suffered as a result of its maladministration.

Anthony Arter CBE

Deputy Pensions Ombudsman
27 September 2023