

complaint

Mr Y has complained that he was mis-sold a pension policy after being put under great pressure from a representative of Sun Life Assurance Company of Canada (U.K.) Limited. Mr Y has said that he did not want to take out a pension because he did not need one and could not afford to pay the contributions.

background

I issued my provisional decision on this complaint in June 2014. The background and circumstances of the complaint, and the reasons why I was minded to uphold the complaint were set out in that document. A copy is attached and forms part of this final decision.

In summary, I found Mr Y and the representative's explanation of the circumstances of the sale consistent and persuasive. Overall, I considered it was more likely than not, on balance, that Mr Y was pressurised into taking out the policy and that he would not have done so but for the pressure applied by the representative. As such, I considered that Sun Life should rescind Mr Y's pension plan, and refund all the net contributions made with appropriate interest.

Sun Life acknowledged receipt of my provisional decision but made no further comments.

Mr Y also acknowledged receipt of my provisional decision and made no further submissions.

my findings

I have considered all the available evidence and argument to decide what is fair and reasonable in the circumstances of this complaint. Given that no further material evidence or arguments have been provided by either party, I see no reason to depart from my provisional findings.

my final decision

Accordingly, for the reasons outlined in my provisional decision, my final decision is that I uphold Mr Y's complaint.

I order Sun Life Assurance Company of Canada (U.K) Limited to rescind Mr Y's pension plan, and refund the net contributions paid with interest at the rate of 8% per annum simple from the date that each payment was made to settlement date.

David Ashley
ombudsman

COPY OF PROVISIONAL DECISION

complaint

Mr Y has complained that he was mis-sold a pension policy after being put under great pressure from a representative of Sun Life Assurance Company of Canada (U.K.) Limited.

Mr Y has said that he did not want to take out a pension because he did not need one and could not afford to pay the contributions.

background

In brief, Mr Y had said that he was pressurised into agreeing to take out a pension as the representative was a friend who was, in turn, being put under pressure to meet sales targets.

The documentation that was completed at the time that the pension was arranged recorded that Mr Y was in his mid-twenties, employed, his income was approximately £16,000 per annum, he had no pension provision in place, and did not have a company pension scheme available to him.

One of our adjudicators investigated Mr Y's complaint and recommended that the complaint should be upheld. Her view was that paying into a pension policy had not been in Mr Y's short term or long term intentions and that he had been unfairly pressurised into purchasing it.

The firm did not agree with the adjudicator's findings and said, in summary, that:

- Mr Y's profile was recorded as planning for retirement.
- Mr Y wrote to it in September 1999 to confirm that he was no longer in employment and wished to put the contributions on hold. Therefore the reason why the contributions ceased was because of Mr Y's lack of employment.

As the parties could not agree the complaint was passed to me to determine.

I issued my provisional decision on this complaint in February 2014. My provisional finding was not to uphold the complaint.

In my view, given Mr Y's circumstances, contributing to a personal pension arrangement appeared to be a suitable recommendation at the time. Whilst I accepted that Mr Y *may* have been put under pressure, it was not possible for me to determine with any reasonable degree of certainty exactly what the representative said during the sales process or what pressure that he applied to Mr Y. In all the circumstances, I was not satisfied that there was sufficient weight of evidence to find in Mr Y's favour.

Mr Y did not agree with my findings. He said, in summary, that the firm had acknowledged its strategy to identify friends and family to sell to and that the representative would confirm the use of inappropriate pressure. He said that he didn't want or could afford a pension at the time and the representative became aggressive when it looked as though he wasn't going to go through with the transaction. A second meeting was therefore arranged, but at the end of the first meeting he was threatened to make sure that he brought his chequebook to the next meeting.

Mr Y said that he could not afford to pay the pension and he had to subsequently stop contributing to it. He said that he hadn't stopped contributing because of unemployment, and if he had told the firm that he was unemployed this had been to protect his friend (the representative) from the consequences of losing the sale. He did not start another pension for many years – when he could afford to do so.

The representative provided a submission to support Mr Y's version of events. He said that representatives had been "...heavily encouraged to make sales to friends and family as they were less likely to say no." He remembered threatening Mr Y to bring his chequebook to the second meeting. The representative also said that he believed the only reason Mr Y had taken out the policy was because of the undue pressure put on him. He

said that he (the representative) had been determined to meet the sales target and considering what was right for Mr Y came second to getting him to take out the plan.

The business responded to say that the representative was a close personal friend of Mr Y and his submission was one sided and not subjective. Although Mr Y had said he had stopped contributions into the plan because of affordability reasons the letter he had sent it in September 1999 said he had had to discontinue contributions because he was not in full time employment.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

The firm has said that the representative was, and is, a close friend of Mr Y and his submissions are one sided. Clearly, I agree that I have to consider the evidence in the context that the former representative is very good friends with Mr Y and attach appropriate weight to it.

However, Mr Y and the representative's explanation of the circumstances of the sale are consistent. Mr Y has also consistently said that he could not afford the premiums, which was the reason that he ceased making contributions only a few months after starting the plan. The firm has said, on several occasions, that Mr Y wrote to it to say that he was ceasing premiums because he was no longer in full time employment, or unemployed. However Mr Y's letter said that he was discontinuing premiums because of financial difficulties – albeit he expected them to be short term. Again, this is consistent with Mr Y's previous submissions. It appears that it was a memo that said he was not in full time employment.

Although I note that Mr Y has said that he was threatened to bring his chequebook to the second meeting I think this should be considered in the context of the representative being a friend – I find it unlikely that he would have been intimidated. However, where the evidence is unclear, inconsistent or inconclusive I am bound to make a decision on the balance of probabilities – that is, what I consider was more likely to have happened on the balance of the evidence that is available.

In my first provisional decision I explained I was not minded to uphold Mr Y's complaint because I was not satisfied that there was sufficient weight of evidence to find in Mr Y's favour. I considered that contributing to a personal pension arrangement was suitable for Mr Y's circumstances at the time. And although Mr Y had subsequently stopped contributions a few months later, my understanding was that this was because he had become unemployed.

However, the representative's submissions which were subsequently provided are consistent with Mr Y's – albeit I have considered them in the context of their relationship. And Mr Y wrote to the firm in September 1999 saying the premiums were unaffordable – which is again consistent with Mr Y's evidence. In my experience, Mr Y and the representative's versions of events are plausible. And I have found them persuasive. Overall, I consider it more likely than not, on balance, that Mr Y was pressurised into taking out the policy and that he would not have done so but for the pressure applied by the representative.

my provisional decision

Accordingly, my provisional decision is to uphold Mr Y's complaint.

I intend to direct that Sun Life Assurance Company of Canada (U.K.) Limited rescinds Mr Y's pension plan, and refunds all the net contributions paid with interest at the rate of 8% per annum simple from the date that each payment was made to settlement date.

David Ashley
ombudsman