DRN-3181448

The complaint

Mr G complains about the suitability of the advice provided by Lighthouse Advisory Services Limited ("Lighthouse") in October 2017 to transfer the value of his safeguarded benefits in the British Steel Pension Scheme ("BSPS") to a personal pension plan ("PPP").

What happened

The events leading up to this complaint were set out in detail by our investigator in her assessment which she provided to both Mr G and Lighthouse. I don't intend to repeat here what our investigator stated but will instead provide a summary.

In March 2016, Mr G's employer, Tata Steel UK Ltd ("Tata Steel"), announced that it would be examining options to restructure its business including decoupling the BSPS from the company. The BSPS was a defined benefits ("DB") pension scheme that provided a guaranteed lifetime income to members. The consultation with members referred to possible outcomes regarding their safeguarded benefits in the scheme, one of which was a transfer to the Pension Protection Fund ("PPF") – the PPF is a statutory fund designed to provide compensation to members of DB pension schemes when their employer becomes insolvent. Tata Steel closed the BSPS to further benefit accrual from 31 March 2017.

In May 2017, the PPF announced that the terms of a Regulated Apportionment Arrangement ("RAA") had been agreed – this was approved by The Pensions Regulator in August 2017. Under the announced plans, Tata Steel agreed to set up and sponsor a new DB pension scheme, the BSPS2, subject to certain conditions relating to funding and size being satisfied.

In October 2017, these changes were communicated to BSPS members, including Mr G, under the *'Time to Choose'* communication exercise. This explained that BSPS members had three options regarding their safeguarded benefits:

1. Transfer to the PPF;
2. Transfer to the BSPS2; or
3. Transfer to an alternative pension plan such as a PPP.

Options 1 and 2 would've enabled Mr G to retain guaranteed income, albeit at a lower level than provided by the BSPS.

Members had to decide which option they wanted by 22 December 2017 – those that didn't choose an option remained in the BSPS and were ultimately transferred to the PPF. The details of Mr G's safeguarded benefits in the BSPS were as follows:

- He had accrued 31 years and 9 months' qualifying service between August 1984 and May 2016;

- The scheme pension provided was based on his final salary, pensionable service and benefit accrual rate – as at the date of leaving the scheme in May 2016, his annual scheme pension was £13,893.90. The scheme pension comprised several elements, each part of which would be revalued by a prescribed amount over the term to the scheme normal retirement age of 65 and, once in payment, would escalate annually by a prescribed amount.

- Payment of benefits before 65 would be subject to an early retirement reduction on a sliding scale – in simple terms, the earlier benefits were taken, the greater the reduction applied to the scheme pension. Broadly, this meant a 30% reduction would apply to the scheme pension if benefits were taken at age 55 and a 18% reduction at age 60.

- The revaluation and escalation rates were guaranteed in line with the BSPS rules;

- The estimated revalued annual scheme pension payable by the BSPS at age 65 was £19,900 or a reduced pension of £13,188, plus tax-free cash of £87,923;

- In the event the BSPS fell into the PPF, the estimated revalued annual scheme pension payable by the PPF at age 65 was £16,467 or a reduced pension of £12,916, plus tax-free cash of £85,755;

- The cash equivalent transfer value of his safeguarded benefits was £353,048.35.

Mr G was concerned about what the announcement by Tata Steel meant for the security of his safeguarded benefits in the BSPS. He contacted Lighthouse for advice. He initially met one of its advisers in October 2017. A fact find document and attitude to risk questionnaire were completed which recorded the following information about Mr G:

- He was aged 52, in good health, divorced and two adult children who were financially independent. He had a partner but had no plans to live together or marry;

- He was employed by Tata Steel and paid gross annual income of about £34,000;

- His assets comprised his main residence valued at £130,000 and £2,500 in cash deposits. He didn't have any other savings or investments;

- His liabilities comprised a repayment mortgage of £97,000 on his main residence and a car loan with an outstanding balance of about £1,300;

- He had surplus monthly income of about £300 after paying for essential expenditure;

- In addition to the value of his safeguarded benefits in the BSPS, he was on course to receive the full State pension at age 67 and had been a member of Tata Steel's defined contribution ("DC") pension scheme since June 2016. The total annual contribution into his DC plan was 12% of his gross annual salary. This would increase in line with changes to his salary. He wanted to retire at age 65 and receive monthly retirement income of about £900 (net of income tax) in 2017 terms;

- His risk profile was determined to be 5 on a scale of 1 to 10 where 1 was lowest risk and 10 was highest risk. The score of 5 was described as *'Low medium'.* This was defined as, *"While you are likely to be concerned with not getting as much back from your investments as you put in, you also probably want to make higher returns on your investments. Your preferred investments are likely to be a mix of lower and medium-risk investments which may include cash, cash-type assets, bonds and UK commercial property, and higher-risk investments such as UK and overseas shares".*

In the fact find document, Lighthouse's adviser noted in reference to Mr G:

> *"You told me that you would like to look at alternatives for this* [safeguarded benefits in the BSPS] *as you are concerned that upon your death your pension will die with you and not pass down to your family.*
>
> *You also told me that you would like a pension with greater flexibility when you retire so that you can control your level of income around your pension needs.*
>
> *You have concerns around the future of the British Steel pension scheme and feel that the future options will further detriment your retirement.*
>
> *You told me that you have a partner and have no plans to live together or get married."*

In October 2017, Lighthouse issued a suitability report to Mr G in which it recommended that he transfer the value of his safeguarded benefits in the BSPS to a PPP. The report confirmed Mr G's needs and objectives as follows:

> *"You confirmed that your objective is to work until age 65 but would consider retiring earlier if your situation dictated. You feel that you will require approximately £900 per month (in today's terms) to meet your monthly outgoings in retirement."*

Lighthouse explained in its report that it recommended a transfer to a PPP because Mr G's safeguarded benefits didn't offer income flexibility, flexible death benefits, succession planning for family, control over his investment choice or tax efficient drawdown of income.

To align with Mr G's *'Low medium'* risk profile, Lighthouse recommended that the transfer value of £353,048.35 be invested equally in five different funds. The costs associated with the recommendation were set out in the suitability report, as follows:

Initial advice charge

- £10,591.45 – initial adviser charge for recommendation and implementation

Ongoing annual charges deducted from the PPP fund value

- 0.50% ongoing adviser charge
- 0.23% plus £18.75 per quarter platform charge
- Investment fund charges ranging between 0.95% and 1.37% across the five recommended funds

Mr G accepted the recommendation, following which the transfer to the PPP was completed in December 2017.

This complaint

In 2021, Mr G complained to Lighthouse about the suitability of the pension transfer advice it had given to him in October 2017. He said he had become worried that the advice he'd been given was unsuitable.

Lighthouse didn't uphold this complaint. In summary, it stated that it had complied with and considered the FCA's rules and that it had clearly demonstrated that the pension transfer was in his best interests. This was because its advice had enabled him to achieve his income, flexibility and death benefit objectives. It acknowledged that the scheme pension would've met his recorded income need but the death benefits payable by the scheme wouldn't have enable him to pass on benefits to his children in line with his objective. In addition, it stated that the transfer removed the risk of his safeguarded benefits being transferred to the PPF which was another motivating factor for the pension transfer. In its opinion, no other option would've achieved his objectives.

One of our investigators considered this complaint. She initially gathered additional information from Mr G. He explained that his primary motive for transferring was because he was single and concerned that following his death his two adult children wouldn't receive any benefits from his scheme pension. But he had come to realise that there was an alternative option of life cover to provide a death lump sum benefit to his children, but Lighthouse had failed to consider and advise him on this.

Our investigator recommended that this complaint be upheld. She said that Mr G had provided contradictory answers on the risk profile questionnaire and that Lighthouse had wrongly categorised him as a *'Low medium'* risk taker. She noted that he had very limited investment experience and thought, based on his answers in the questionnaire, that it was more likely he was a low or very low risk investor. She also thought that he didn't have any capacity for loss. As for the critical yield figures attached to the transaction, she thought these indicated that it was likely Mr G would be financially worse off as a result of the pension transfer. And she thought that Lighthouse had failed to adequately demonstrate that it had considered alternative options, such as life cover, to achieve Mr G's objectives, meaning he made the decision to transfer from an uninformed position. Overall, she wasn't persuaded that it was suitable for Mr G to relinquish guaranteed income that would've easily met his recorded income need in exchange for an unknown death benefit lump sum for his children.

To put things right, our investigator recommended that Lighthouse carry out a redress calculation in line with the FCA's *'Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers'* on the basis that Mr G opted for the PPF (rather than the BSPS2) and would be a 20% income taxpayer in retirement. In addition, she said that Lighthouse should pay Mr G £300 for the trouble and upset caused by its unsuitable advice and the resultant disruption to his secured retirement planning.

Lighthouse didn't accept our investigator's assessment and requested that the matter be referred to an ombudsman for review. Lighthouse subsequently appointed a law firm to represent it ("the Representative"). The Representative provided substantial additional comments and evidence for the ombudsman's consideration. Within this it stated that the advice given to Mr G had been assessed as suitable by an FCA-appointed 'Skilled Person'. In summary, the Representative stated that that this service had applied and outdated and narrow approach when assessing this complaint including failing to pay due regard to the FCA's rules and Defined Benefit Advice Assessment Tool ("DBAAT") when assessing the suitability of the advice given to Mr G.

While waiting for this complaint to be allocated to an ombudsman, our investigator contacted the parties in connection with the FCA's consultation launched on 2 August 2022 regarding new pension transfer redress guidance. The investigator asked Mr G that in the event this complaint is ultimately upheld, whether he preferred redress to be calculated on the current methodology or the updated guidance expected to be implemented in early 2023. The investigator told Mr G that if we didn't receive an answer that we'd assume he preferred redress on the current methodology set out in *'Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers'*. As at the date of this final decision, Mr G didn't confirm which option he preferred.

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's fair and reasonable, and in accordance with the Financial Services and Markets Act 2000 and the Dispute Resolution section in the FCA's Handbook, I need to take into account relevant: law and regulations; regulators' rules, guidance and standards, and codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

I'd like to clarify that the purpose of this final decision isn't to repeat or address every single point raised by the parties. I've carefully considered the substantial additional comments and evidence provided by the Representative in response to our investigator's assessment. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. I'm satisfied that I've been provided with sufficient evidence to decide this complaint.

<u>*The FCA's suitability rules and guidance*</u>

Lighthouse was authorised and regulated by the FCA at the time it advised Mr G. This meant that when it advised him it was required to follow the rules and consider the guidance in the Conduct of Business Sourcebook ("COBS") section in the FCA's Handbook.

Primarily, Lighthouse was required under COBS 2.1.1R to *"act honestly, fairly and professionally in accordance with the best interests of its client"* in its dealings with Mr G. The suitability rules and guidance that applied when Lighthouse provided its recommendation to Mr G were set out in COBS 9. The purpose of the rules and guidance are to ensure that businesses take reasonable steps to provide advice that is suitable for their clients' needs and to ensure they're not inappropriately exposed to a level of risk beyond their investment objectives and risk profile. To ensure that this is the case, and in line with the requirements in COBS 9.2.2R, the business must gather the necessary information for it to be confident its advice is suitable. Broadly speaking, this section of COBS 9 sets out the requirement for a regulated advisory business to undertake a "fact find" process.

There were also specific rules and guidance relating to pension transfers involving safeguarded benefits, as was applicable to Mr G's case – these were contained in COBS 19.

COBS 19.1.2R required the following:

> *"A firm must:*
>
> *(1) compare the benefits likely (on reasonable assumptions) to be paid under a defined benefits pension scheme or other pension scheme with safeguarded benefits with the benefits afforded by a personal pension scheme, stakeholder pension scheme or other pension scheme with flexible benefits, before it advises a retail client to transfer out of a defined benefits pension scheme or other pension scheme with safeguarded benefits;*
>
> *(2) ensure that the comparison includes enough information for the client to be able to make an informed decision;*
>
> *(3) give the client a copy of the comparison, drawing the client's attention to the factors that do and do not support the firm's advice, in good time, and in any case no*

later than when the key features document is provided; and

(4) take reasonable steps to ensure that the client understands the firm's comparison and its advice."

Under the heading "Suitability", COBS 19.1.6G set out the following:

"When advising a retail client who is, or is eligible to be, a member of a defined benefits occupational pension scheme or other scheme with safeguarded benefits whether to transfer, convert or opt-out, a firm should start by assuming that a transfer, conversion or opt-out will not be suitable. A firm should only then consider a transfer, conversion or opt-out to be suitable if it can ***clearly demonstrate, on contemporary evidence****, that the transfer, conversion or opt-out is in the client's best interests."* [my emphasis added]

COBS 19.1.7G also stated:

"When a firm advises a retail client on a pension transfer, pension conversion or pension opt-out, it should consider the client's attitude to risk including, where relevant, in relation to the rate of investment growth that would have to be achieved to replicate the benefits being given up."

And COBS 19.1.8G stated that:

"When a firm prepares a suitability report it should include:

(1) a summary of the advantages and disadvantages of its personal recommendation;

(2) an analysis of the financial implications (if the recommendation is to opt-out); and

(3) a summary of any other material information."

The Representative stated that our investigator's interpretation of the FCA's Handbook was flawed, specifically in reference to COBS 19.1.6G and the starting assumption that a pension transfer is unsuitable. In its view, this is only guidance and businesses aren't required to follow it. It thinks that guidance is intended to supplement the rules under COBS 9.2.1R and COBS 9.2.3R which set out businesses' obligations for assessing suitability. It says that this service should therefore only be bound by the FCA's rules and not its guidance when deciding Mr G's complaint.

I disagree with the Representative's position. Firstly, as I've set out above and in DISP 3.6.4R, when deciding this complaint and considering what's fair and reasonable, I consider several factors including regulators' rules, guidance and standards. So I'm not bound by the FCA's rules. In any event, the FCA has over the past several years repeatedly set out its view that it considers safeguarded benefits to be valuable and that it expects businesses to start by assuming that a pension transfer will be unsuitable.

Based on the above regulatory rules and guidance, it's my view that businesses advising on pension transfers should start by assuming that the existing DB pension scheme is suitable and to only recommend a transfer, which converts safeguarded benefits into flexible benefits, if it can *clearly* demonstrate it's in their client's best interests.

Mr G's situation

The situation for Mr G wasn't normal because the existing DB pension scheme, the BSPS, was closing. So he was essentially forced to transfer the value of his safeguarded benefits to a new scheme. He had three options, as set out in the *'Time to Choose'* pack issued to him in October 2017:

1. Transfer to the PPF;
2. Transfer to the BSPS2; or
3. Transfer to an alternative pension plan such as a PPP.

It's undeniable that it was a period of great uncertainty for individuals such as Mr G. Many of these individuals were in a vulnerable position due to the uncertainty surrounding the future of the BSPS. I think the uncertainty only served to emphasise the need at that time for a balanced assessment of the options available and ultimately the provision of suitable advice. It's my view that any concerns Mr G had about the security of his safeguarded benefits should've been addressed and appropriately managed by the professional party in the transaction, Lighthouse.

Options 1 and 2 would've enabled Mr G to retain guaranteed income, albeit at a lower level than provided by the BSPS. There were differences between the PPF and the BSPS2. For deferred members below the scheme normal retirement age, like Mr G, the PPF would provide compensation based on 90% of their accrued pension at the scheme normal retirement age (in effect a 10% reduction in benefits). The BSPS2 didn't apply such a reduction. The BSPS2 also provided the potential for discretionary increases to the accrued pension, a higher level of spouse's pension and the option to transfer to an alternative pension to convert to flexible benefits at a later date, if then deemed suitable, when needs could be determined with far greater accuracy than at age 52 – the PPF didn't offer these additional features.

So while the situation was somewhat unusual, Mr G still had the option to retain guaranteed benefits in either the PPF or BSPS2. Lighthouse's advice was provided in October 2017, after the *'Time to Choose'* pack had been issued to members. I think that the risk of the BSPS falling into the PPF had receded by a large extent by that point, as the RAA had been approved and the BSPS2 was being proposed primarily because it could provide benefits in most situations that were higher than PPF benefits. Bearing this in mind together with Mr G's age, circumstances and objective to retire at age 65, it's my view that he would've been better off choosing the BSPS2 instead of the PPF because of the higher level of income it would pay at that age.

I don't believe that the circumstances surrounding the BSPS altered the FCA's position or its expectations of firms. Given the FCA's view on safeguarded benefits and what was known at that time, it's my fair and reasonable opinion that Lighthouse should've started its advice process by assuming the BSPS2 was likely to be the most suitable option for Mr G and to only recommend a transfer to the PPP if it could *clearly* demonstrate it was in his best interests, as referenced in COBS 19.1.6G.

<u>Mr G's objectives</u>

Based on the fact find document and suitability report, Mr G had three broad objectives regarding his safeguarded benefits, summarised as follows:

- **Death benefits** – He was concerned that, following his death, his two adult children wouldn't receive any benefits from his scheme pension. He wanted to ensure that any unused pension benefits be passed on to his children;

- **Flexibility** – He planned to retire at age 65 but wanted the flexibility to take benefits sooner, if required. When he retired, he required approximately £900 (net of income tax) in 2017 terms to meet his expected monthly expenditure; and

- **Control** – He was concerned about the future of the BSPS and the level of his benefits being reduced further or the BSPS falling into the PPF which would result in a 10% reduction in his benefits. He wanted to sever ties and have control over his pension benefits by transferring to a PPP.

I recognise that Mr G's safeguarded benefits was ultimately his money to do with as he saw fit. However, he was relying on Lighthouse to provide expert, balanced information and advice, taking into account all the information available to it at that time – so that he could then make an informed decision. I understand that there will be instances where a client seeks financial advice with preconceived notions or concerns about the financial health of an employer or DB pension scheme but, as the professional party, Lighthouse was tasked with rationally addressing those concerns and providing an appropriately balanced view of the available options.

In my view, financial planning isn't simply about wish fulfilment and facilitating whatever course of action a client wishes to take to achieve their objectives. Financial planning generally involves managing client expectations and a need for compromises. Mr G was relying on Lighthouse to provide expert advice.

Transfer value analysis

One of the key components in determining the suitability of a pension transfer is assessing the financial viability of the proposed transaction. The transfer value analysis system ("TVAS") rules applied at the time Lighthouse advised Mr G. This required it to carry out a transfer value analysis to calculate the 'critical yield' applicable to the proposed transfer. The critical yield is the annual rate of investment return required on the invested transfer value, after charges, to match the capitalised value of the benefits offered by the DB pension scheme on the assumption that the value of the alternative pension is used to secure a lifetime annuity at the scheme normal retirement age – the higher the critical yield, the less likely that the alternative pension will achieve sufficient investment growth to match the revalued pension payable by the DB pension scheme.

Lighthouse calculated the following revalued pension figures and critical yield figures on the basis of Mr G taking benefits at his planned retirement age of 65:

Scheme	**Reduced pension and maximum tax-free cash**	**Full pension only**
BSPS	£13,188 plus tax-free cash of £87,923 *Critical yield of 6.88%*	£19,900 *Critical yield of 9.15%*
PPF	£12,916 plus tax-free cash of £85,755 *Critical yield of 4.72%*	£16,467 *Critical yield of 5.13%*

The revalued pension and critical yield figures for the BSPS2 weren't calculated. But it was known at the time Lighthouse advised Mr G that the BSPS2 would pay a higher level of benefits than the PPF but lower than the BSPS at age 65, so the figures for the BSPS2 likely fell somewhere in between the figures above.

Lighthouse's recommendation to Mr G was provided to him after the FCA gave instructions in its *'Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable*

DB pension transfers' as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published on our website. While businesses weren't required to refer to these rates when giving advice on pension transfers, I consider that they provide a useful indication of what growth rates would've been considered reasonably achievable when the advice was given in this case. The closest discount rate which I'm able to refer to and published by this service for the period before October 2017 is 4.0% based on Mr G taking benefits at the scheme normal retirement age of 65. Furthermore, the FCA's projection rate for pensions at the time was 8% per year for the upper rate, 5% per year for the middle rate and 2% per year for the lower rate.

I've taken this into account, along with the composition of assets in the discount rate, Mr G's *'Low medium'* attitude to investment risk and the investment timeframe to age 65. Based on these factors, I think the critical yield figures attached to the proposed transfer were likely unachievable for an investor investing in line with Mr G's attitude to risk. As result, I think it was unlikely that the PPP would provide benefits that matched the relinquished benefits, let alone exceed them. Rather, in my view, it seems it was more likely Mr G would financially worse off. And it seems that Lighthouse agrees because in its suitability report the adviser stated that the expected annual growth rate on the recommended portfolio was less than the critical yield figures applicable to the BSPS.

So, from an economic point of view, Lighthouse agrees with me it was likely Mr G would be financially worse off by transferring on a like-for-like basis when compared to the scheme pension.

As well as Mr G's attitude to risk, it's also important to consider capacity for loss. His safeguarded benefits represented 31 years and 9 months' qualifying service. I think it's fair to say that when the time came to retire, he'd be heavily reliant on the value of these benefits to support his standard of living in retirement. I say this because Mr G had limited other assets at that time upon which he could rely on in retirement. I acknowledge that he was an active member of the Tata Steel DC pension scheme and was on course to receive a full State pension, but the value of those benefits at retirement would likely represent the smaller proportion of Mr G's overall retirement provision. Given the importance of Mr G's safeguarded benefits, I think it's fair to say that he had a very low capacity for loss because a reduction in the value of his benefits would likely have a materially detrimental effect on his standard of living in retirement.

Of course, financial viability isn't the only consideration when giving pension transfer advice, as was set out in COBS 19.1.7B (G). A reasonable prospect of the critical yield being met or exceeded wouldn't necessarily mean that the transfer was suitable, and, conversely, there might be other considerations which mean a pension transfer is suitable, despite providing overall lower benefits. I'll now go on to consider this in the context of Mr G's recorded objectives.

Death benefits objective

The evidence shows that the primary motive and objective for Mr G concerned his desire, following his death, to pass on any unused pension benefits to his adult children. It was recorded that his children were financially independent.

Death benefits are an emotive subject and of course when asked most people would like their loved ones to be taken care of when they die.

The recommended PPP offered flexible death benefits. Based on the applicable tax rules, if death occurred under age 75 the benefits are paid free of income tax – after age 75 the benefits are taxed at the beneficiary's marginal rate of income tax. It's fair to say that immediately following the transfer to the PPP and for the period until Mr G withdrew retirement benefits, the death benefits available would be significant (subject to investment performance) due to the simple fact he couldn't access and deplete the fund value.

But Mr G was recorded as being in good health. So he could expect life expectancy into his 80s. There weren't any immediate health concerns that indicated a pension transfer was a suitable course of action at that time.

As noted above, the value of Mr G's safeguarded benefits would represent the backbone of his retirement provision by the time he came to retire. Withdrawing money from the PPP to meet his income and lump sum needs from age 65 would likely mean that the size of the fund remaining in later years – when death is more likely – could be much smaller than expected.

If it was a genuine objective for Mr G to provide a lump sum to his financially independent children on his death, then life cover could've achieved the same objective of providing a lump sum while enabling him to maintain safeguarded benefits in the BSPS2. I note that he had disposable income available every month after paying his bills which he could've used to pay for life cover to achieve the death lump sum objective. Pure life cover for a defined term is generally cheap and some cover may have been affordable for Mr G given he was aged 52 and recorded as being in good health. However, I cannot see evidence that Lighthouse adequately investigated the life cover option. For example, I haven't seen evidence that it quantified Mr G's death lump sum need, over what term, how this might change over time, how it might be met by other means or present personalised life cover quotes to him to enable him to make an informed decision.

But, in any case, I understand that through his employment Mr G had death in service life cover based on a multiple of four times' his salary, meaning a lump sum of about £136,000 would be paid in the event he died while still employed by Tata Steel – this was payable regardless of whether his safeguarded benefits were transferred to BSPS2, PPF or a PPP. In addition, Mr G's BSPS contributions of £50,432 plus interest at 3% compound and the value of his Tata Steel DC pension plan would be payable to his nominated beneficiaries.

So it seems to me that in the immediate future, certainly while Mr G remained employed by Tata Steel, that a lump sum of at least £186,432 would be paid on his death. It appears that Mr G intended to remain employed by Tata Steel until he retired at age 65, so I think it's fair to say that there wasn't any expectation the death in service benefits would disappear in the foreseeable future.

This leads me to conclude that there wasn't any immediate need to transfer at that time to provide death benefits in a different format bearing in mind the cover already in place while Mr G remained employed by Tata Steel.

While I understand that death benefits are important to consumers, the priority here, in my opinion, was to advise Mr G about what was best for his own retirement provision. A pension is primarily designed to provide income in retirement. It's my view that Mr G had no health issues at the time Lighthouse advised him which might reasonably have prompted him to relinquish the guarantees attached to his own retirement income for the sake of an enhanced safety net for his children. So I'm not convinced there was any real merit in him transferring to a PPP at that time to provide a lump sum death benefit for his adult children who were recorded as being financially independent in any event.

Flexibility objective

It was recorded that Mr G planned to retire at age 65 but wanted the flexibility to take benefits sooner, if required. And when he retired he required approximately £900 (net of income tax) in 2017 terms to meet his expected monthly expenditure.

If benefits were taken early under the BSPS (and similarly the BSPS2) then the income paid to Mr G would be reduced. The reduction wasn't a penalty but applied to reflect the fact that the scheme would have to support the income for longer than anticipated, and to protect the interests of scheme members generally. Lighthouse characterised the reduction as a penalty. It also portrayed the PPP option as allowing for early retirement earlier than age 65 without the "penalties" which would be applied to the BSPS (and BSPS2) options. The reality was of course that the PPP would've had less time to grow if accessed earlier than 65 and any resulting income would need to last longer. I cannot see that this was adequately explained to Mr G so that he could understand accessing any of the available options early would likely lead to reduced retirement income during his lifetime compared to taking benefits at age 65.

While I don't doubt Mr G would've liked the idea of the flexibility to retire early, the evidence shows that his plan was to retire at age 65. I'm not convinced it was suitable for him to exchange guaranteed income for flexible income which came with unlimited downside risk. Given his personal and financial situation, I think that when the time came to retire that Mr G would likely require a steady, secure income stream to meet his minimum income retirement and to provide for a comfortable retirement.

As noted in the transfer value analysis section above, Mr G's revalued annual pension under the BSPS2 at age 65 was projected to be about £13,000 per year plus a maximum tax-free cash sum of about £87,000. Then at age 67 he was expected to receive the full State pension which was about £8,000 per year in 2017/18. Therefore, had he transferred to the BSPS2, his income need of £900 (net of income tax) in 2017 would've been met by guaranteed and escalating income sources from age 65 onwards (and by the PPF, if required). In my view, where a client's income need can be met by the DB pension scheme, it's difficult to justify relinquishing guaranteed income in exchange for flexible income that doesn't have any guarantees. That is, unless the prospect of an alternatively secured guaranteed income, by way of a transfer and then immediate annuity purchase, was likely to have produced a higher level of guaranteed income. But this wasn't the case here.

If the BSPS2, State pension and Tata Steel DC pension scheme generated excess income then this could've been reinvested for future use which carried far less risk than the course of action recommended by Lighthouse.

Based on the above, it's my view that there wasn't any need for Mr G to transfer to a PPP to achieve his income objective, especially given the high critical yield figures attached to the transaction and the likelihood he'd be financially worse off. Transferring unnecessarily led to the investment, inflation and longevity risks associated with providing the retirement benefits moving from the DB pension scheme to Mr G for the following 13-year period until age 65 and beyond but for no clearly defined advantage in terms of achieving Mr G's income objective. The evidence simply doesn't support the position as to why flexibility and the option of early retirement would've been a sufficiently compelling reason for Mr G to relinquish valuable benefit guarantees at that time. Given that Mr G's income need could've been met by the BSPS2, I don't think Lighthouse clearly demonstrated why transferring was in his best interests in terms of meeting this objective.

Control objective

It's clear that Mr G was concerned about the BSPS and the risk that this might fall into the PPF. I accept that such concerns were common among steelworkers at the time, and that it would've been a major motivation behind many of them transferring out. So I can understand why Mr G wanted to have control over his benefits by transferring to a PPP.

That being said, as noted above, I think that by October 2017 the risk of the BSPS falling into the PPF had receded by a large extent by that point, as the RAA had been approved and the BSPS2 was being proposed primarily because it could provide benefits in most situations that were higher than PPF benefits. But, in any event, I don't consider a transfer to the PPF was an outcome for Mr G to avoid at all costs. I'll explain why.

The PPF was introduced by the government in 2005 as a 'lifeboat' scheme to protect members of DB pension schemes with the promise of providing a minimum level of benefits. The revaluation and escalation rates are set by law. Depending on his age on transfer to the PPF, Mr G could expect to receive a minimum of 90% of his scheme pension, although this would be affected by the revaluation and escalation rates under the PPF. This contrasted with the recommended PPP where there's no promise of a minimum level of benefits payable. At the time of Lighthouse's recommendation, the PPF's financial position remained robust. So there wasn't any reason at that time to question the financial viability of the PPF to provide benefits in the future.

Had Lighthouse advised Mr G to transfer to the BSPS2 he would've maintained safeguarded benefits and retained the option to transfer to a PPP at a later date, if then deemed suitable, when he could immediately access benefits and, crucially, determine his retirement income and lump sum needs with far greater accuracy than at age 52. I think this is a key point.

A transfer to the BSPS2 would've also removed any immediate concerns Mr G had about the PPF. After all, the whole reason the BSPS2 was conceived was to provide a new long-term DB pension scheme for former members of the BSPS. And if it was the case, in the future, that the BSPS2 was at risk of being transferred to the PPF, then I think it likely that, similarly to the BSPS, members would be given the opportunity to transfer out to a PPP before any transfer to the PPF occurred. So I don't think that there was any immediate concern about options disappearing for Mr G or that there was an urgency to transfer to a PPP at that time to avoid a transfer to the PPF. In my view, Mr G was reliant on Lighthouse to provide a fair and balanced assessment of the BSPS2 and PPF and to act in his best interests in this regard. This ought to have involved discussing with Mr G the features, risks and benefits of those alternative options and allaying his misapprehensions.

If Mr G was concerned about his safeguarded benefits being transferred to the PPF which would result in him losing 10% of his scheme pension, then I question why he would accept the risk of transferring to a PPP which exposed him to unlimited downside risks where the loss could be significantly greater than 10%. This simply doesn't make sense to me and suggests that he didn't have the knowledge and experience to understand the features, risks and benefits of the PPF compared to the pension transfer. He was relying on Lighthouse to provide expert advice on this point, but I think it failed to do this. In my view, the suitability report doesn't deal with Mr G's concerns about the PPF. So he likely thought that a transfer to the PPF was an outcome to avoid at all costs and probably reinforced his view a transfer to a PPP was the best course of action.

In summary, I think that Lighthouse failed to adequately allay Mr G's misapprehensions and that he therefore made the decision to transfer to the PPP from an uninformed position regarding the BSPS2 and PPF options.

Skilled Person review

The FCA previously required Lighthouse to appoint a 'Skilled Person' to conduct a review of certain DB pension transfers that were advised on or arranged by Lighthouse. As part of that review exercise, the advice given to Mr G was assessed as suitable by the 'Skilled Person' using the FCA's DBAAT. The Representative stated that the assessment by the 'Skilled Person' supported Lighthouse's position that Mr G's complaint shouldn't be upheld. The Representative stated that this service has ignored the DBAAT outcome in Mr G's case and also the methodology the FCA has stated the industry should use when assessing the suitability of DB pension transfer advice.

I want to address this. In deciding this complaint I'm not bound by the conclusions reached by a 'Skilled Person'. My role is to decide this complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case. I haven't seen any evidence that shows the pension transfer led to Mr G gaining any clearly defined advantage compared to the alternative option of transferring to the BSPS2. And so I'm not persuaded that a pension transfer was clearly demonstrated to be in his best interests. So for the reasons I've set out above, I think it's fair and reasonable to uphold this complaint.

Notwithstanding this, the DBAAT was completed to show that Mr G wouldn't be reliant on the income produced by his safeguarded benefits. I disagree. He was then aged 52 and his safeguarded benefits represented 31 years and 9 months' qualifying service. He had limited other assets at that time upon which he could rely to provide pension income. I acknowledge that he was an active member of the Tata Steel DC pension scheme and was on course to receive the full State pension, but, as I set out above, it's my view that he would be reliant on the income produced by his safeguarded benefits in retirement – in my view, without these benefits he'd be unable to meet his essential expenditure in retirement.

If properly informed, would Mr G have transferred anyway?

In potential mitigation of Lighthouse's advice, I've also thought about whether Mr G, if placed in a fully informed position, would nevertheless have decided to transfer the value of his safeguarded benefits to a PPP. This was a complex transaction involving many factors which Mr G, as a layperson, wouldn't have been familiar. It's my view, given his lack of investment knowledge and experience, that he was heavily reliant on Lighthouse, as the professional party in the transaction, to take those factors into account and provide suitable, balanced advice.

Mr G might have chosen to transfer against advice on the basis of his concerns. However, bearing in mind that many members transferred to BSPS2 even though such concerns were widely held, and bearing in mind also his lack of investment experience and attitude to risk, I don't think, on balance, that he would've insisted on transferring. Given Mr G's reliance on Lighthouse, I think it's likely he would've accepted a recommendation for the BSPS2 had it advised him to take that course of action.

Putting things right

A fair and reasonable outcome would be for Lighthouse to put Mr G, as far as possible, into the position he would now be in but for the unsuitable advice he was given. My view is aligned with that of our investigator in that, had Mr G been properly advised, he would've opted for the BSPS2 rather than the PPF.

While some information on the benefits of BSPS2 were still to be confirmed, I think that by October 2017 the risk of the BSPS falling into the PPF had receded by a large extent by that point, as the RAA had been approved and the BSPS2 was being proposed primarily because it could provide benefits in most situations that were higher than PPF benefits at age 65.

It's my view that had he been given suitable advice, Mr G would've transferred to the BSPS2 and his benefits would now be preserved in that scheme. And so, with the aim of placing him into the correct financial position, I think it's fair and reasonable that the benefits offered by the BSPS2 should be used for comparison purposes.

As such, the calculation on the basis of entering the BSPS2 should be carried out using the most recent financial assumptions at the date of the actual calculation. This should be on the basis Mr G takes benefits at the BSPS2 normal retirement age of 65 to align with his recorded circumstances.

FCA consultation

On 2 August 2022, the FCA launched a consultation on new DB pension transfer redress guidance and set out its proposals in a consultation document – CP22/15-calculating redress for non-compliant pension transfer advice**.**

In this consultation, the FCA stated that it considers the current redress methodology in Finalised Guidance (FG) 17/9 remains appropriate and fundamental changes aren't necessary. However, its review identified some areas where it considers it could improve or clarify the methodology to ensure it continues to provide appropriate redress.

A policy statement was published on 28 November 2022 which set out the new rules and guidance – https://www.fca.org.uk/publication/policy/ps22-13.pdf. The new rules will come into effect on 1 April 2023.

The FCA has stated that it expects firms to continue to calculate and offer compensation to their customers using the existing guidance in FG 17/9 while the consultation takes place. But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with any new rules and guidance that may come into force after the consultation has concluded.

We previously asked Mr G whether he preferred any redress to be calculated now in line with current guidance or wait for the any new guidance and rules to be published. He didn't make a choice. So, as set out previously, I've assumed in this case he doesn't want to wait for any new guidance. I'm satisfied that a calculation in line with FG17/9 remains appropriate and, if a loss is identified, will provide fair redress for Mr G.

Lighthouse must therefore undertake a redress calculation in line with the FCA's pension review guidance as updated by it in its *'Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers'*. This calculation should be carried out as at the date of this final decision and using the most recent financial assumptions. In accordance with the FCA's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr G's acceptance of this final decision.

Lighthouse may wish to contact the Department for Work and Pensions ("DWP") to obtain Mr G's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P). These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the BSPS on Mr G's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should, if possible, be paid into Mr G's PPP. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the PPP if it would conflict with any existing protection or allowance.

If a payment into the PPP isn't possible or has protection or allowance implications, it should be paid directly to Mr G as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could've been taken as tax-free cash and 75% would've been taxed according to his likely income tax rate in retirement – presumed to be 20%, as previously stated by our investigator. So making a notional deduction of 15% overall from the loss adequately reflects this.

If this complaint hasn't been settled in full and final settlement by the time any new guidance or rules come into effect, I'd expect Lighthouse to carry out a calculation in line with the updated rules and/or guidance in any event.

In addition, Lighthouse should pay Mr G £300 the trouble and upset caused by its unsuitable advice and the resultant disruption to his secured retirement planning.

The compensation amount must, where possible, be paid to Mr G within 90 days of the date Lighthouse receives notification of his acceptance of this final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of this final decision to the date of settlement for any time, in excess of 90 days, that it takes Lighthouse to pay Mr G.

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above – and so any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90 day period in which interest won't apply. Where I uphold a complaint, I can award fair compensation of up to £160,000, plus any interest and/or costs that I consider are appropriate.

Where I consider that fair compensation requires payment of an amount that might exceed £160,000, I may recommend that the business pays the balance.

My final decision

<u>Determination and money award:</u> I uphold this complaint and require Lighthouse Advisory Services Limited to pay Mr G the compensation amount as set out in the steps above, up to a maximum of £160,000. Where the compensation amount doesn't exceed £160,000, I would additionally require Lighthouse Advisory Services Limited to pay Mr G any interest on that amount in full, as set out above. Where the compensation amount already exceeds £160,000, I would only require Lighthouse Advisory Services Limited to pay Mr G any interest as set out above on the sum of £160,000.

<u>Recommendation:</u> If the compensation amount exceeds £160,000, I also recommend that Lighthouse Advisory Services Limited pays Mr G the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr G. If Mr G accepts this final decision, the money award becomes binding on Lighthouse Advisory Services Limited. My recommendation wouldn't be binding. Further, it's unlikely that Mr G can accept this final decision and go to court to ask for the balance. Mr G may want to consider getting independent legal advice before deciding whether to accept this final decision.

Lighthouse Advisory Services Limited must provide to Mr G a breakdown of the loss assessment in a simple, easily understandable format.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr G to accept or reject my decision before 3 March 2023.
Clint Penfold
Ombudsman