DRN-3272743

The complaint

Miss B complains that Lighthouse Advisory Services Limited gave her unsuitable advice to transfer the deferred benefits of an occupational pension scheme (OPS) to a personal pension in 2009. She says she will be worse off in retirement as a result.

What happened

In 2009 Miss B met with Lighthouse for advice about her pension. They discussed her personal circumstances during a fact find. In summary this recorded the following about Miss B;

- She was 45 years old, divorced with two adult children.
- She had an income of around £14,000 and savings of £1,000.
- She lived in her £120,000 home with a £40,000 mortgage.
- She had a life assurance policy.
- She had deferred benefits in an OPS but no other pensions were mentioned.
- She had concerns over the funding status of her OPS and the lack of death benefits. She also wanted the flexibility of earlier retirement options if possible.

Miss B also completed a questionnaire to assess her attitude to investment risk. Lighthouse recorded her as having a cautious to moderate attitude to investment risk.

Lighthouse also produced a report which showed the critical yield – the amount by which Miss B's new pension would need to grow by each year to match (not better) the benefits she was giving up in the OPS. The document showed Miss B OPS would provide an estimated income of £9,675.74 per year at age 65. The report suggested the critical yield required would be between 8.6% and 10.2% depending on the product it was transferred in to.

In July 2009 Lighthouse sent Miss B a recommendation report. In summary it set out Miss B's objectives as having;

- The flexibility of keeping retirement options open for as long as possible.
- The ability to provide death benefits for her dependants.
- The ability to benefit from any growth on her investments.
- The flexibility to diversify or switch her investment dependant on circumstances.
- The option of drawing benefits in a flexible way.

Lighthouse noted that, due to Miss B's more cautious attitude to investment risk, it wouldn't recommend the transfer to go ahead on commercial grounds. However, based on Miss B's other objectives they recommended she transfer her OPS benefits into a personal pension.

Miss B followed Lighthouse's recommendation and transferred the benefits of her OPS to a personal pension.

In 2020, Miss B complained to Lighthouse. She said she'd heard from a former colleague who's transfer value of their deferred benefits from the previous OPS was around £200,000 at that time. And Miss B's pension was only valued at around £70,000. So, she thought she'd been badly advised to transfer her benefits when she did.

In their response, Lighthouse said Miss B had made her complaint too late. They said she needed to have complained within six years of the transfer, or three years since she became aware, or ought to have become aware, she had cause to complain. And they thought, as Miss B had later transferred her pension into a new plan in 2016, she ought reasonably to have known then that she had cause to complain.

Miss B was unhappy with Lighthouse's response and so brought her complaint to our service. Our investigator first concluded that Miss B had made her complaint in time. An ombudsman also agreed. The investigator then looked into the merits of the complaint. He concluded that the reasons Lighthouse recorded to justify the transfer didn't demonstrate that it was in Miss B's best interests to do so. He thought they should have recommended she stay in her OPS, and had they done so Miss B would be in a financially better position now. So, he asked Lighthouse to put Miss B back into the position she would have been in, had she not transferred.

Lighthouse disagreed with our investigators opinion and so the case has been passed to me for 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.

An ombudsman has already considered whether this complaint was made within the time limits our service must consider. To confirm, for the same reasons we've already given, I agree that it was.

When considering what is fair and reasonable, I take into account relevant laws and regulations as well as the regulator's rules, guidance and standards. Where appropriate I also consider what was good industry practice at the time of the advice.

What the regulator had said?

As a regulated firm, Lighthouse had many rules and principles that they needed to adhere to when providing advice to Miss B. Many of these were found in the regulators handbook under the conduct of businesses (COBS) and principles (PRIN)

The most relevant rules to this complaint are;

- COBS 2.1 says a firm must act honestly, fairly and professionally in accordance with their client's best interests.

- COBS 9.2 says a firm needs to obtain the necessary information regarding their client's knowledge and experience in the investment field, financial situation and objectives.

- PRIN 6 says a firm must pay due regard to their customer's interests and treat them fairly.

- PRIN 9 says a firm must take reasonable care to ensure the suitability of its advice.

The regulator also set out specific guidance for businesses advising on pension transfers from an OPS. This was found in COBS 19.1.6. It said;

"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."

So, Lighthouse needed to start from a position of thinking the transfer was unlikely to be suitable. If they recommended the transfer they needed to show, using contemporary evidence, that it was in Miss B's best interests to do so.

Did Lighthouse follow the regulators guidance?

I don't think they did. I'll explain why.

In its recommendation report, Lighthouse conclude that it would be difficult to recommend the transfer on 'commercial grounds'. They say the critical yield was 10.2% and it would be very difficult to achieve that bearing in mind Miss B's cautious/moderate attitude to investment risk. And I agree that's an accurate assessment. It was very clear from the outset that Miss B would be financially worse off by transferring.

While Lighthouse went on to give other reasons as to why the transfer met Miss B's objectives, I don't think they did enough to assess the level of income Miss B required in retirement and how transferring her pension would achieve that.

I say that because, according to the fact find, this was Miss B's sole pension. She had minimal savings and no other income provisions in retirement. While Miss B was only 45 and a way off from retirement, it was Lighthouse's role to ensure they truly understood Miss B's financial situation and objectives in retirement. And I think they failed to do that in the recommendation report.

Lighthouse failed to point out that the purpose of a pension is to provide an income in retirement, and while Miss B may have had other objectives, she needed to consider how she was going to provide for herself in retirement.

In the recommendation part of their report Lighthouse said *'providing the company remains solvent you are likely to be as well off staying in the existing scheme as moving.'* But that statement was misleading. Lighthouse's own analysis showed it was likely Miss B would be far worse off in retirement by transferring. I don't think Lighthouse gave enough prominence and explanation of the reduced income Miss B was likely to face. The OPS would have provided an estimated annual income of £9,675.74 per year at age 65. But by transferring, Lighthouse estimated Miss B would receive an income of £4170 per year - less than half of what her OPS would have provided. With such a large deficit, Lighthouse needed to show that achieving Miss B’s other objectives far outweighed the likelihood that she’d be worse off in retirement.

Lighthouse recorded several reasons why Miss B wanted to transfer. So, I’ve considered whether the transfer met those objectives, and if overall, Lighthouse demonstrated it was in Miss B’s best interest to transfer.

Flexibility of retirement options and choice of investments.

The recommendation report suggests Miss B was concerned that the OPS didn’t allow for early retirement or control of the investments. While I imagine Miss B may have been enticed by being able to access her benefits early, she was still 10 years away from being able to access any benefits at all.

Miss B didn’t seem to have any need for a flexible income in retirement and Lighthouse haven’t demonstrated why is wasn’t in Miss B’s interest to have a guaranteed, regular income. As she was so far from being able to access her benefits, a pension transfer could have been revisited again in the future, should a flexible income have been required.

It was Lighthouse’s role not just to say how the transfer would achieve Miss B’s objectives but to analyse how realistic they were and how they could be achieved. I don’t think Lighthouse did that.

There was no analysis of Miss B’s likely income needs in retirement or how feasible taking early retirement was likely to be. There’s no evidence Miss B was knowledgeable or experienced in investments and so I don’t think Lighthouse evidenced Miss B had a need for flexibility of investments either. She was likely to need to seek, and pay for, on-going advice with her investments.

Death benefits

Lighthouse say Miss B was keen to transfer as her OPS scheme as the death benefits it provided weren’t as good as she could achieve with a personal pension. The recommendation report said if Miss B was to pass way when in receipt of her OPS, there was a 50% dependants’ pension payable to her spouse or the remainder of any pension due in the first 5 years. In deferment the OPS also provided a spouse’s pension or lump sum of twice the contributions made if no spouses pension was paid. On the other hand, Lighthouse said on transfer the personal pension would have a lump sum payable of its fund value – being around £51,000 at the time.

Lighthouse failed to point out that when Miss B started drawing on her pension, the value of the death benefits would start to decrease. And as there was no guarantee the funds wouldn’t run out, there may be no funds to pass on at all.

Lighthouse seem to put a lot of weight on the death benefits the pension could provide. When looking at fund choices, they recommended a fund with a guaranteed death benefit which had a three-year guarantee built into it. But Miss B was only 45 years old. And was described as being in good health. So, it was very unlikely she would pass away within the time period of the guarantee.

While the OPS may not have provided benefits for her children, it wasn’t clear why this was required. Miss B’s children were already adults and likely to be financially independent before she passed away. If Miss B had a specific objective of providing a lump sum to her children after her passing, Lighthouse could have considered changing or increasing the life assurance policy she already had in place.

Lighthouse didn't include an estimated life expectancy for Miss B, but there was no reason to think she'd pass away before drawing on her benefits. And as I've said, the main purpose of the pension wasn't to provide death benefits. Miss B still needed to draw an income from it for many years to come. I don't think Lighthouse have provided sufficient evidence to show that it was in Miss B's best interest to transfer her pension based on an objective of providing death benefits for her children.

Concerns over funding of her OPS

Lighthouse say Miss B was concerned about the funding of the OPS and noted that the latest valuation of the scheme showed a 12% deficit. But Lighthouse went on to say that the valuation was from 2005. And the scheme was making contributions each year to make up for the shortfall. It said by 2007 there was only a small deficit. But there was also protection in place in the form of the pension protection fund (PPF) which could protect up to 100% of the pensions value (or 90% for those not yet at retirement age). So, Miss B had some strong protection, even if the scheme did fail.

In the recommendation report, the critical yield required to match the OPS benefits even if the PPF was invoked was 9.18%. The report noted that this was based on a different personal pension to what they were recommending Miss B. Their recommended personal pension had higher fees, so the critical yield was likely to be higher than 9.18%. In their summary Lighthouse said *'if the scheme did fall back on the pension protection fund, the critical yield is lower so there is a greater chance you would be better off on transfer.'*

I think this statement, whilst true, was misleading. I say that because, Miss B's cautious/moderate attitude to risk meant that even at the lower critical yield of 9.18%, it was still highly unlikely she would achieve that to out-perform the OPS even if it entered the PPF.

While Miss B might have had concerns about the funding of her OPS, I think Lighthouse could have done more to reduce those fears. And they haven't evidenced why it was in Miss B's interest to transfer her OPS benefits due to this objective as even under the PPF, it was likely Miss B would be financially worse off in retirement by transferring.

Summary

For the reasons I've explained, I don't think Lighthouse have clearly demonstrated, based on contemporary evidence, that it was in Miss B's best interest to transfer her pension.

They failed to demonstrate how she could secure an income which met her needs in retirement – which is the main purpose of a pension. They also failed to demonstrate how Miss B's other objectives outweighed the need for such an income. And so, I don't think Lighthouse met their obligations to act in Miss B's best interests.

Lighthouse should have recommended that Miss B remain in her OPS for the reasons I've explained. Had they done so; I think it's likely Miss B would have remained in the OPS.
I therefore hold Lighthouse responsible for any losses Miss B will likely incur because of their unsatisfactory advice.

Putting things right

A fair and reasonable outcome would be for the business to put Miss B, as far as possible, into the position she would now be in but for the unsuitable advice. I consider she would have remained in the occupational scheme. Lighthouse must therefore undertake a redress calculation in line with the regulator's pension review guidance as updated by the Financial

Conduct Authority 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 my final decision, and using the most recent financial assumptions at the date of that decision. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Miss B's acceptance of the decision.

Lighthouse may wish to contact the Department for Work and Pensions (DWP) to obtain Miss B'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 occupational scheme on Miss B's SERPS/S2P entitlement.

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

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Miss B 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 have been taken as tax-free cash and 75% would have been taxed according to her likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

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

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.

Determination and money award: I require Lighthouse to pay Miss B the compensation amount as set out in the steps above, up to a maximum of £160,000.

Where the compensation amount does not exceed £160,000 I additionally require Lighthouse to pay Miss B any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000 I only require Lighthouse to pay Miss B any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Lighthouse pays Miss B the balance. I additionally recommend any interest calculated as set out above on this balance to be paid to Miss B**.**

If Miss B accepts my decision, the money award is binding on Lighthouse. My recommendation is not binding on Lighthouse. Further, it's unlikely that Miss B can accept my decision and go to court to ask for the balance. Miss B may want to consider getting independent legal advice before deciding whether to accept this decision.

In addition to the above, if the compensation amount does not exceed £160,000 I also require Lighthouse to pay Miss B £250 for the upset they've caused. I say that because it's clear Miss B has been caused distress from believing her pension provisions have been substantially eroded by Lighthouse's recommendation.

My final decision

My final decision is I uphold this complaint. Lighthouse Advisory Services Limited should compensate Miss B as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 23 March 2022.

Timothy Wilkes
Ombudsman