

The complaint

Mr W complains that he was given unsuitable advice by Lighthouse Financial Advice Limited, an appointed representative of Lighthouse Advisory Services Limited ('Lighthouse') to transfer deferred benefits from his defined benefit (DB) pension with British Steel (BSPS) to a personal pension.

What happened

In March 2016, Tata Steel UK Ltd announced that it would be examining options to restructure its business including decoupling the BSPS from the company. The consultation with members referred to possible outcomes regarding their preserved pension benefits, 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 defined benefit pension schemes when their employer becomes insolvent. The BSPS was closed to further benefit accrual from 31 March 2017.

In May 2017, the Pension Protection Fund (PPF) made the announcement that the terms of a Regulated Apportionment Arrangement (RAA) had been agreed. That announcement said that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr W's employer would be set up – the BSPS 2.

In February 2017, Mr W met with Lighthouse for advice on his pension as he was concerned about the PPF and the security of his pension.

A fact find and risk profiler were completed which showed:

- Mr W was nearly 54, married with no dependent children, and in good health. He earned £46,700 per year. He and his wife owned their home worth around £125,000 without a mortgage and had no other debts. They had cash savings of £3,000.
- Mr W's outgoings were recorded as £1,448 per month leaving him with disposable income of over £1,000 per month.
- Mr W and his wife (who was the same age) were both planning to retire at 60. He was looking to take maximum tax-free cash at age 60 plus initial withdrawals of £1,200 per month.
- Mrs W had her own DB pension. Mr W was also a member of the new company defined contribution (DC) pension scheme with combined employee and employer contributions of 16%.
- Mr W's attitude to risk was recorded as lowest medium.

I've seen a suitability report dated 12 February 2017 which recommends Mr W to transfer his DB benefits to a personal pension. As far as I can see the main reason given at the time was that Mr W wanted to retire early which might not have been possible in the PPF. And that Mr W wanted control and flexibility as well as maximise death benefits for his family.

A suitability report dated September 2017 shows Lighthouse recommended Mr W to transfer his BPS benefits to a personal pension.

Mr W complained to Lighthouse in 2020 about the advice he received. He said it wasn't suitable. Lighthouse rejected his complaint.

Mr W referred his complaint to this service and one of our investigators upheld his complaint. He agreed Lighthouse had given unsuitable advice.

Lighthouse disagreed and so the complaint was 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.

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

I've considered the very detailed submissions by both parties in full. However, I will focus on what I consider to be the most relevant points.

The applicable rules, regulations and requirements

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of Lighthouse's actions here.

PRIN 6 : A firm must pay due regard to the interests of its customers and treat them fairly.

PRIN 7: A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

COBS 2.1.1R: A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule)

The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability.

The provisions in COBS 19 which specifically relate to a DB pension transfer.

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 that 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."

COBS 19.1.3 G:

In particular, the comparison should:

(1) take into account all of the retail client's relevant circumstances;

(2) have regard to the benefits and options available under the ceding scheme and the effect of replacing them with the benefits and options under the proposed scheme;

(3) explain the assumptions on which it is based and the rates of return that would have to be achieved to replicate the benefits being given up;

(4) be illustrated on rates of return which take into account the likely expected returns of the assets in which the retail client's funds will be invested; and

(5) where an immediate crystallisation of benefits is sought by the retail client prior to the ceding scheme's normal retirement age, compare the benefits available from crystallisation at normal retirement age under that scheme.

Under the heading "Suitability", the following was set out:

COBS 19.1.6G:

"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."

COBS 19.1.7G:

"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."

COBS 19.1.7B:

"In considering whether to make a personal recommendation, a firm should not regard a rate of return which may replicate the benefits being given up from the defined benefits pension scheme or other scheme with safeguarded benefits as sufficient in itself."

COBS 19.1.8G

"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.”

Did Lighthouse take reasonable steps to ensure a DB transfer was suitable for Mr W?

The regulator’s guidance is that the starting assumption for a transfer from a DB scheme should be that it is unsuitable. A firm should have only considered a transfer if it could clearly demonstrate, on contemporary evidence, that the transfer was in Mr W’s best interests. (COBS 19.1.6G). And having looked at all the evidence available, I’m not satisfied the advice to transfer was in Mr W’s best interests. I’ll explain why.

financial viability

The transfer analysis showed that the investment return required to match the DB pension at retirement at age 60 (critical yield) was 15.33% per year if benefits were taken in full or 10.1% if taken as a lump sum payment with a reduced pension. The equivalent critical yields to match the benefits available if BSPS moved to the PPF at age 60 were 7.85% and 6.82%.

The advice was given during the period when the Financial Ombudsman Service was publishing 'discount rates' on our website for use in loss assessments where a complaint about a past pension transfer was being upheld. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, I consider they provide a useful indication of what growth rates would have been considered reasonably achievable when the advice was given in this case.

The discount rate in this case was 3.1% per year for five years to retirement. For further comparison, the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2% per year.

I've taken this into account, along with the composition of assets in the discount rate, Mr W's lowest medium attitude to risk and also the term to retirement. And I think Mr W was likely to receive benefits of a lower overall value than the DB scheme at retirement. I note that Lighthouse came to the same conclusion as they said in their suitability report that it was unlikely the critical yields compared to the BSPS would be achieved. Even the lower critical yield of 6.82% that was needed to match the PPF benefits were likely unachievable in my view given Mr W's attitude to risk and the term to retirement.

In summary, even if BSPS had moved to the PPF and Mr W's benefits were reduced, he was very unlikely to match, let alone exceed his benefits by transferring to a personal pension. By transferring his pension it was highly likely Mr W would receive overall lower benefits in retirement. So based on the above alone, a transfer wasn't in Mr W's best interest.

Of course financial viability isn't the only consideration when giving transfer advice. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I considered below whether such other reasons applied here.

flexibility and control

Mr W was given a questionnaire to rank certain stock objectives. From this it was recorded that he wanted a flexible income and control over his pension as well as the maximum tax-free cash lump sum. However, there is no evidence that Mr W's individual situation was discussed in detail and for what purpose he needed flexibility and a significant cash lump sum. There is no note of discussions about his plans for retirement, other than it being noted

that flexible income would allow him to reduce income when he reached state pension age. There is no indication that a detailed and meaningful discussion about his personal objectives took place.

Flexibility and control might sound attractive, but I can't see that Mr W had any concrete need for it. Mr W could have retired early from the BPS or the PPF and the income of £1,200 per month he said he required could have been easily met by either scheme from age 60. And the BPS2 would have given him similar benefits to the BPS. Both the BPS and the PPF were also offering a generous tax-free cash lump sum of between £115,000 and £130,000 which Mr W could have used to spend more in earlier years of his retirement. He also had a DC pension he could have used flexibly. I can't see that any of this was explored.

It was recorded Mr W didn't want a guaranteed income, however I'm not sure what this was based on. Mr W had had a guaranteed income all his working life and he had a low medium attitude to risk. So I think a guaranteed income would have been valuable and he would have had flexible options through tax free cash and his DC pension without taking risk on his main pension provisions.

I can see that Lighthouse's internal compliance questioned whether Mr W had the necessary capacity for loss to expose his pension to risk and the ability to withdraw unlimited funds. They were concerned that Mr W didn't have any other assets in the event of poor fund performance. The adviser pointed to the cashflow analysis which showed overall savings of over £400,000 at age 100. However, the cashflow analysis did not allow for poor fund performance or Mr W taking more income in the early years of his retirement which was one of the perceived benefits of having a flexible pension plan.

The analysis depended on certain investment returns which weren't guaranteed. And it assumed that Mr and Mrs W would live on their state pensions together with Mrs W's income after age 67 and essentially no income from Mr W would be accessed. The cashflow analysis was not stress tested.

So I don't think it gave a full and reliable picture and the capacity for loss concerns weren't adequately addressed in my view. However, in any event, even if there was a reasonable chance Mr W would not run out of funds in his lifetime if he used his pension conservatively, I don't think this was reason enough for a transfer given that overall higher benefits could have been achieved in the DB scheme and even in the PPF.

Death benefits

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. However, whilst death benefits might be important for consumers, there generally shouldn't be a disproportionate emphasis on this compared to their own retirement needs. And the existing death benefits with BPS were not to be underestimated. Mr W's wife would have received a guaranteed spouse's pension which escalated each year for life which would have been valuable if Mr W predeceased her. Mr W was in good health and so more focus should have been on ensuring Mr W would receive the best possible retirement benefits over a long period of time. A pension is primarily designed to provide income in retirement – not a lump sum to family after death. And I don't think Lighthouse explored to what extent Mr W was prepared to accept a lower retirement income in exchange for higher death benefits.

In any event Mr W also had his employer's DC pension with generous contributions which allowed him to accrue further benefits until retirement. He could have used this pension flexibly from age 55 if he wished to do so. He also could have left lump sums from this

pension to his wife and daughter. And he could have saved and invested any excess income for the benefit of his family in a tax-efficient way for example through a trust.

I think it's clear Mr W already had valuable death benefits through the DB scheme and he could've made other arrangements (in the ways I've set out above) to ensure that a significant part of his pension was left to his family after his death. So there was no need to give up his DB benefits for these reasons.

I also think the cashflow analysis presented was somewhat misleading. It showed Mr W would be left with a very large amount of savings at age 100 which could be left to dependants. However, as explained above the analysis depended on certain investment returns which weren't guaranteed. And it assumed that Mr and Mrs W would live on their state pensions together with Mrs W's income after age 67 and essentially no income from Mr W would be accessed. No similar comparison was made to what Mr W could accumulate in savings if he remained in the BPS. So I don't think Mr W was given a fair picture of his options.

concerns about financial stability of BPS

There is no doubt Mr W was concerned about his employer's financial situation and the uncertainty surrounding the BPS.

Lots of his colleagues at the time were transferring out of the scheme and he was worried his pension would end up in the PPF. So I think it's likely Mr W was worried about the security of his pension which is why he wanted to take control of it.

However, it was Lighthouse's obligation to give Mr W an objective picture and recommend what was in his best interest. Mr W was particularly concerned about BPS moving to the PPF. He was worried about the security of his pension and that he could lose some of it. However, as the figures above show, even if this happened, Mr W was still likely to be better off not transferring. Also, his pension wasn't under his employer's control as he perceived it. It was independently controlled by trustees to protect members' interests. I can't see that this was properly explained to him or that Lighthouse did enough to alleviate Mr W's concerns in this regard.

I acknowledge that if the BPS ended up in the PPF, the opportunity to transfer at a later date was lost. Or if he moved to the BPS2 and later decided to move his pension, the transfer value could have been lower in future. However, given that on the evidence provided it was in his best interest to stay in the DB scheme, this shouldn't have been too much of a concern and was not a valid reason to transfer.

Skilled person review

I recognise that the FCA required Lighthouse to appoint a Skilled Person under section 166 of the Financial Services and Markets Act (FSMA) to conduct a review of certain DB pension transfers advised on or arranged by Lighthouse ('the Skilled Person Review').

The Skilled Person who is independent from Lighthouse reviewed the advice given to Mr W in 2021 using the FCA's Defined Benefit Advice Assessment Tool ('DBAAT') and found the advice to have been suitable.

Lighthouse feels this hasn't been taken into account and that the DBAAT tool and methodology used by the regulator has been ignored.

I can assure Lighthouse that I have considered the skilled person's assessment and all the documents that were provided with it. The DBAAT tool is designed to help establish and guide users whether DB transfer advice was suitable in a specific case. In this case the suggested suitability rating was in fact "potentially unsuitable". The skilled person overall thought the advice was suitable and provided their reasoning which I have considered.

However, I'm considering this advice independently and I'm not bound by what the skilled person decided. As set out at the beginning of the decision I've taken into account COBS 9 and COBS 19 as well as the Principles, FCA rules and guidance and good industry practice.

And having done so I've reached a different outcome for the reasons set out above. This doesn't mean I used different considerations to the regulator. I simply don't agree with some of the answers the skilled person gave in the DBAAT tool and the ultimate outcome that was reached. For example, I didn't think there was sufficient evidence on file that flexible benefits or maximising death benefits were in Mr W's best interest. And I think the PPF would have provided adequate benefits.

summary

It's possible that Mr W was attracted by the idea of transferring. He might have heard from colleagues that this is what they were doing and he was very concerned about the possibility of his pension falling to the PPF. And I don't doubt that flexibility, control and lump sum death benefits would have also sounded like attractive features. But Lighthouse wasn't there to just transact what Mr W might have thought he wanted. The adviser's role was to really understand what Mr W needed and recommend what was in his best interest.

I appreciate Lighthouse included some risk warnings in their suitability report. However, this doesn't replace suitable advice. Mr W's fear about the PPF and the security of his pension should have been put into perspective. If Lighthouse had recommended him to stay and explained their reasons properly why Mr W would be better off staying in his DB scheme and that going into the PPF wasn't as concerning as he thought, I think Mr W likely would have followed their advice. Mr W also was about to be given the option to choose to move to a new scheme, the BSPS2, so there was a reasonable chance his pension wouldn't end up with the PPF anyway.

I don't think Lighthouse took reasonable steps to ensure their advice was suitable and in Mr W's best interest. They should have recommended him to remain in his DB scheme and await the upcoming information on his available options. Mr W would have shortly after had the choice to move to the PPF or transfer to the BSPS2. And I think reasonable advice would have been for Mr W to opt for the BSPS2.

BSPS2 wouldn't have decreased Mr W's initial entitlement by 10% like the PPF and some of his benefits would have had potentially higher increases in BSPS2. Under BSPS2, the spouse's pension would be set at 50% of Mr W's pension at the date of death, and this would be calculated as if no lump sum was taken at retirement. So the spouse's pension would likely have been higher than in the PPF.

Early retirement factors in the PPF were lower and commutation factors for tax free cash entitlement were also more favourable under the PPF. However, Mr W was still six years from his desired retirement age of 60 and in the second suitability report early retirement wasn't mentioned as a priority any longer. So I think these plans could have still reasonably changed. And so I think he ought to have been advised to move to the BSPS2.

Putting things right

A fair and reasonable outcome would be for the business to put Mr W, as far as possible, into the position he would now be in but for the unsuitable advice he was given. I consider he would have remained a member of the BPS and subsequently moved to the BPS2. So calculations should be made on this assumption.

Lighthouse must undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in policy statement PS22/13 and set out in the regulator's handbook in DISP App 4:

<https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter>.

I understand Mr W took benefits in October 2020, aged 57, after being made redundant and that he doesn't have any plans to return to work in future. His representatives say he only retired at 57 as he was told by Lighthouse during the advice process that he could afford to do so. They say if he had remained in the DB scheme, he would have deferred taking benefits as long as possible.

I think overall it's a reasonable assumption that when Mr W was made redundant he made the decision to retire from work and would have likely done so if he had kept DB benefits in the BPS2.

I previously queried whether Mr W could have afforded to defer his retirement. Mr W said he received a redundancy payment of around £15,000 and shortly before that he had received an inheritance of around £22,000. His wife inherited further amounts in May and August 2021 totalling £48,726. Mr W said: *"The reason I started drawing my pension pot was, companies, advisers, stock market were all dipping or crashing my pension, so I was determined to get some before it was further damaged. Yes we could manage on redundancy money and inheritance, however we stopped trusting anybody"*.

Mr W since provided evidence that around the time of the redundancy he spent around £10,000 on home improvements, £14,400 on settling outstanding debts, £5,000 on vet bills and that he assisted his daughter financially with her divorce and some of her home improvements (unspecified costs). Mr W didn't want to provide further details about Mrs W's inheritance payments. It's also unclear if at the time Mr W retired, he would have known about these future payments and so I haven't considered these further.

It's clear in my view that Mr W couldn't have spent the money as he did as well as replace his income solely from his inheritance and redundancy money. I appreciate it would have been possible to live on this money for maybe a couple of years if he didn't use it for additional expenditure. However, I'm not convinced on balance that this is what he would have chosen to do.

The benefits from the BPS available at age 60 were estimated to be £25,196 per year or £115,319 with a reduced income of £17,297 per year. Taking benefits from the BPS2 three years earlier would have reduced these benefits. However, on balance I think the benefits likely available at age 57 from the BPS2 would have allowed him to retire. So I think given the chance to spend money in his early retirement to make things better for him and his family rather than postpone this for a couple of years, it's more likely he would have accessed his DB benefits allowing him to spend money as he wished and still have sufficient retirement income.

So after careful consideration I think it's fair and reasonable for Lighthouse to assume Mr W would have taken DB benefits at age 57.

Lighthouse should use the FCA's BSPS-specific redress calculator to calculate the redress. A copy of the BSPS calculator output should be sent to Mr W and our Service upon completion of the calculation.

This calculation should be carried out using the most recent financial assumptions in line with DISP App 4. In accordance with the regulator's expectations, this should be undertaken promptly following receipt of notification of Mr W's acceptance of my final decision.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, Lighthouse should:

- calculate and offer Mr W redress as a cash lump sum payment,
- explain to Mr W before starting the redress calculation that:
 - their redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
 - a straightforward way to invest their redress prudently is to use it to augment their DC pension
- offer to calculate how much of any redress Mr W receives could be augmented rather than receiving it all as a cash lump sum
- if Mr W accepts Lighthouse's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr W for the calculation, even if he ultimately decides not to have any of their redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr W's end of year tax position.

Redress paid to Mr W as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, Mr W may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr W's likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

In addition Lighthouse should pay Mr W £350 for the distress their unsuitable advice has caused him which has led to uncertainty about his pension at a time when he had already retired.

My final decision

Determination and money award: I uphold this complaint and require Lighthouse Advisory Services Limited to pay Mr W 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 would additionally require Lighthouse Advisory Services Limited to pay Mr W 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 W 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 Advisory Services Limited pays Mr W the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr W. If Mr W accepts this decision, the money award becomes binding on Lighthouse Advisory Services Limited. My recommendation would not be binding. Further, it's unlikely that Mr H can accept my decision and go to court to ask for the balance. Mr W may want to consider getting independent legal advice before deciding whether to accept any final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 28 July 2023.

Nina Walter
Ombudsman