DRN-3613766

The complaint

Mr S complains that Lighthouse Financial Advice Limited, an appointed representative of Lighthouse Advisory Services Limited ('Lighthouse') gave him unsuitable advice 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 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 S's employer would be set up – the BSPS2.

In October 2017, members of the BSPS were being sent a "Time to Choose" letter which gave them the options to either stay in the BSPS and move with it to the PPF, move to the BSPS2 or transfer their BSPS benefits elsewhere. The deadline to make their choices was 22 December 2017.

Mr S was advised in October 2016 to transfer his BSPS benefits to a personal pension.

He complained to Lighthouse in 2020 that the advice he had been given was unsuitable and a transfer shouldn't have been recommended. Lighthouse upheld Mr S's complaint on 14 July 2020. They said based on Mr S's specific circumstances they didn't feel they were fully able to demonstrate that the transfer recommended was the most suitable option for him. Lighthouse told Mr S they were prepared to make him a monetary offer and asked for information in order to calculate redress.

Mr S referred his complaint to this service on 6 October 2020. He complained about the advice he received and said he suffered financial loss as a consequence and that the situation caused him stress and anxiety. No offer of compensation had been made by Lighthouse at this point.

Mr S was prepared to wait for this settlement offer, however by July 2021 this had still not been made and our investigator informed Lighthouse that we would continue with our investigation.

The investigator upheld Mr S's complaint in January 2022. He said one of the reasons to transfer was to be able to take a lump sum to clear his mortgage, however Mr S had some savings. He also had disposable income and there was no indication his mortgage payments were unaffordable. So the investigator didn't think Mr S needed to transfer his pension for this reason.

He thought if Lighthouse had given Mr S suitable advice he likely would have remained in the BSPS and chosen to move to the BSPS2 in 2017/2018 during the time to choose exercise. He recommended Lighthouse to calculate losses in line with the regulator's guidance for DB transfer redress in force at the time (Final Guidance (FG)17/9) and pay Mr S £300 for the distress and inconvenience caused.

In the meantime, unbeknown to the investigator, Mr S had been sent a settlement offer of £75,265.80 on 30 September 2021. The offer was open for 60 days and the letter made it clear that if no response was received, the settlement offer would lapse. It seems the offer was never accepted by Mr S.

Mr S's representatives responded to the investigator's view in February 2022 to say they agreed Mr S had no need to access his pension at age 55 for a lump sum. He took some tax-free cash in 2017 because the adviser mentioned the ability of taking a lump sum and not taking an income at the same time as an advantage of transferring his DB pension to a more flexible personal pension. They said Mr S retired in January 2021 and that's when he started accessing income from his pension. If Mr S had remained in the DB scheme, he would have accessed his pension at that point. Lighthouse's offer was calculated based on the assumption Mr S would have taken benefits from the DB scheme in February 2017, this being the date he took a lump sum from his personal pension.

He asked the investigator to clarify in his view that if suitably advised Mr S would have taken benefits from the BSPS2 in January 2021 and that Lighthouse should calculate losses on that basis. The investigator agreed with this argument and sent a second view recommending Lighthouse to calculate redress on this assumption.

Lighthouse submitted arguments that the complaint raised about the redress methodology used was completely separate to Mr S's initial complaint about the advice he received. They say the original complaint had been upheld by Lighthouse and the investigator agreed with this outcome. The later comments about the redress and how it was calculated didn't amount to a complaint as defined in the FCA handbook*. 'expression of dissatisfaction… from or on behalf of, a person about the provision of, or failure to provide, a financial service… or redress determination (redress determination being a determination under a consumer redress scheme under Section 404 FSMA).* Lighthouse argued this meant we couldn't consider the later comments about redress as they didn't fall under our jurisdiction.

Lighthouse also was concerned that the redress calculation had been carried out by a Skilled Person appointed under Section 166 FSMA using a redress methodology in line with FG17/9. They considered the suggested amendment to assume Mr S's retirement age from BSPS2 to be in January 2021 to be a departure from FG17/9.

Our investigator remained of the view we could consider Mr S's complaint which was whether he was given unsuitable advice and how this should be put right. And he remained of the view that assuming a retirement date from the DB scheme of January 2021 would put Mr S in the position he would have been in if suitable advice had been given.
Lighthouse continued to disagree, 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.

Can I consider Mr S's complaint?

Mr S complained about the advice he was given by Lighthouse to transfer his BSPS benefits and this is the complaint this service is considering. Part of our considerations is naturally how any unsuitable advice should be put right.

It is correct that we couldn't consider a new, second, separate complaint just about how redress was calculated by Lighthouse or what outcome the Skilled Person reached. These aren't regulated activities.

However, I fail to see how Mr S's comments in response to the investigator's view can be seen as completely separate to his initial complaint. They were comments on the redress that was being recommended by the investigator. Mr S was concerned that if Lighthouse followed the recommendation, they would calculate redress on the assumption Mr S would have retired at age 55 and Mr S didn't agree with this. So he asked the investigator to make a more specific finding on what retirement age should be assumed. These concerns are still related to Mr S's original complaint that he was unsuitably advised and that he has suffered losses. I appreciate that the redress element is the issue that remains in dispute as Lighthouse has conceded their advice was unsuitable. However, this doesn't mean Mr S's complaint was just about the redress. In fact when he made the complaint, he hadn't even received a redress offer.

I understand the redress offer by Lighthouse was not accepted. I'm independently considering Mr S's complaint about the advice he received and will decide what I consider to be fair compensation. I'm fully satisfied I've got jurisdiction to do so.

Did Lighthouse give suitable advice?

It's not disputed that Mr S was misadvised.

Lighthouse upheld Mr S's complaint and found their advice had not been suitable. The Skilled Person also said in the redress offer letter that based on the information available their review had found that the advice Mr S received was unsuitable for his needs and circumstances at the time.

So in the circumstances I'll keep my findings here fairly short. I considered all the documents provided including the fact find, transfer analysis and suitability report.

Mr S was 54 at the time of the advice and was looking to retire at 60 with an income requirement of £1,300 per month. It was recorded that he wanted to access his tax-free cash lump sum at age 55 to pay off his mortgage and other debts. His attitude to risk was described as low medium.

In order to match his DB benefits Mr S's personal pension needed to meet a critical yield of 22.28% at age 60 which in the suitability report itself was described as unachievable. So the benefits Mr S could receive in the personal pension were very likely to be significantly lower than his benefits in the BSPS. Looking at the transfer analysis, the critical yields were also still very high if the BSPS went to the PPF. So even if his pension had moved to the PPF, it would have been difficult to match these benefits in a personal pension.

Mr S was concerned about BSPS falling to the PPF and it was recorded that if that was the case he couldn't retire before 65 which he wanted to avoid. However, this was incorrect. Mr S could have taken early retirement from the PPF and as set out above likely would have got higher overall benefits than in the personal pension. His income objectives could have been easily met from PPF or BSPS benefits.

Mr S said he wanted to take a lump sum at age 55 to pay off his mortgage and debts. He didn't want to take income at that point. However, whilst I don't doubt that the prospect of being debt-free would have sounded attractive, there was no obvious need for Mr S to do this. The fact find shows that Mr S had disposable income and in fact was about to consolidate his debts leaving him with over £700 per month disposable income more than he had at the time. The mortgage and loans seemed affordable.

Other objectives like flexibility and maximising death benefits were mentioned, but without much detail why Mr S needed this to a point where it was in his best interest to give up guaranteed pension benefits and likely be worse off financially.

So overall, I also come to the conclusion that advice given was not suitable in Mr S's circumstances.

Putting things right

A fair and reasonable outcome is for Lighthouse to put Mr S in the position he likely would be in now if he had received suitable advice. I think if Mr S had been recommended to remain with BSPS he would have listened to his adviser and remained in his DB scheme. Less than a year later, in October 2017, he would have been given the choice between opting for the BSPS2, move to the PPF or transfer his pension elsewhere.

If he had received advice to not transfer his benefits in late 2016 I don't think it's likely he would have transferred out only a few months later. The BSPS2 was expected to provide similar benefits to the BSPS. So balance I think Mr S would have chosen to move to BSPS2 at that point.

Mr S took lump sum benefits from his personal pension at age 55 to pay off debts as he was able to do so without taking an income. As explained above, in my view he didn't need to access benefits to pay off debts and so if he had remained in BSPS and moved to BSPS2 in 2018, I think he would have accessed his DB benefits when he retired from work and needed income. Mr S says he retired and took income from his personal pension in January 2021. So I think it's reasonable to assume that if he hadn't transferred his pension he would have taken benefits from his DB scheme at the same time.

Lighthouse must undertake a redress calculation in line with the current 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.

The assumption for Mr S's retirement age in the calculations should be 59.

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 S 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 or submitted to an appropriate provider promptly following receipt of notification of Mr S'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 S redress as a cash lump sum payment,
- explain to Mr S 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 S receives could be augmented rather than receiving it all as a cash lump sum,

- if Mr S accepts Lighthouse's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr S 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 S's end of year tax position.

Redress paid to Mr S as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, Lighthouse 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 S's income tax rate in retirement – presumed to be 20% So making a notional deduction of 15% overall from the loss adequately reflects this.

I accept that Mr S's complaint was handled by a representative, however Mr S has been worried about the losses to his pension for some time now. I considered that he was close to retirement when he made his complaint and I think the ongoing uncertainty about his future pension would have had an impact on him. So I think it's fair that Lighthouse also pays him £300 to compensate for the worry and stress of the situation caused by their unsuitable advice.

My final decision

I uphold Mr S's complaint and require Lighthouse Advisory Services Limited to pay Mr S compensation as calculated above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 12 July 2023.

Nina Walter
Ombudsman