

## **The complaint**

I set out the background to this complaint in my earlier provisional decision, for clarity, I repeat it here.

Mr E complains that Lighthouse Advisory Services Limited (Lighthouse) recommended he switch his personal pension plan with Prudential and his Section 32 (S32) plan with NPI to a PIM Trustees Essential Self-Invested Personal Pension (SIPP). He says he was then advised by them to invest in complex non-standard investments. Mr E believes the advice was unsuitable and would like to be put back in the same position as if the transfers had not taken place.

Mr E is being represented by a third party, but for ease, I'll refer to all representations as being made by Mr E.

## **What happened**

In or around August or September 2003, Mr E approached Lighthouse to seek advice on his retirement planning needs. At that time, he was 60 years old, self-employed, and earning £24,000 (gross) per annum.

On 5 September 2003 Mr E signed an application form to move his NPI and Prudential plans into the PIM Trustees Essential SIPP. On 15 September 2003, Mr E then signed a fee agreement to pay Lighthouse 1% of the funds transferred to cover the cost of advice. This was countersigned by Adviser A, a Director at Lighthouse.

Mr E's SIPP then received £47,757 from his Prudential pension on 18 December 2003. On 12 January 2004, Lighthouse received a fee of £477.57 for the advice provided, representing 1% of the Prudential transfer.

On 10 March 2004, some three months after receiving the Prudential transfer payment, Mr E extracted £10,204 in tax free cash and £715.50 net, in annual income from the SIPP.

On 31 December 2004, Adviser B (whose involvement I'll reference shortly) ceased being an Adviser for Lighthouse.

The S32 plan wasn't moved in 2003. That's because it appears to have been subject to a complaint that was being looked into by the business that sold the S32 plan to Mr E. Mr E signed the NPI transfer form on 13 June 2005, to move his monies from that plan, into the SIPP. The transfer form was signed off by Person X, a Director at PIM Trustees. On 7 July 2005, Mr E's SIPP received the £167,920.05 transfer payment from his NPI pension.

Further tax-free cash of £37,351 was then extracted on 22 July 2005. In September 2005, Person X (at PIM Trustees), wrote to Mr E stating that as Lighthouse had provided advice on the original NPI transfer, a fee of 1% was payable to them. After an issue arose with their

internal payments system, Mr E was asked to sign a cheque making the 1% payment, payable directly to Adviser B, rather than Lighthouse.

In December 2005, Adviser B, who was no longer employed by Lighthouse, received the fee of £1,679.20 in respect of the NPI transfer. According to the FCA register, he was not an authorised adviser at any other firm at that time either.

Mr E's representatives have stated that on 30 June 2006, Mr E's pension fund, which at this point was valued at £101,100, was invested in Southbank Capital Limited 8% preference shares. Prior to then, the transfer monies appear to have been sat in cash earning a nominal amount of monthly interest.

Mr E explained to this service, he became aware there might be an issue with his SIPP investments back in 2018. He went on to say this happened when the level of income he was drawing had to be reduced. He said he had been trying to find out what had happened to his money by dealing with Person X of PIM Trustees Limited, however those discussions came to an end around 2019 when they stopped responding to him. Mr E says it was at this point he realised he should complain to Lighthouse about the initial advice to transfer to the SIPP.

Mr E complained to Lighthouse on 26 March 2020. He told them, in summary, the original advice to transfer from Prudential and NPI to the SIPP was unsuitable and didn't take full account of his circumstances. He didn't feel the transfer, or the underlying investments were suitable for him. Lighthouse initially rejected the complaint. They said, in summary:

- They accepted there was evidence Lighthouse had been involved in the opening of the PIM Trustees SIPP.
- They didn't believe there was any evidence of their involvement in the management of the underlying investments and, in particular the investment in the Southbank Capital preference shares.

Mr E was unhappy with Lighthouse's response so subsequently complained to this service. Lighthouse objected saying they considered the complaint had been brought outside of the permitted timescales. The case was then escalated to an Ombudsman who issued a jurisdiction decision on 27 May 2022. He determined this was a complaint we could look at.

The complaint was then considered by one of our Investigators. He concluded that Lighthouse had not treated Mr E unfairly. He also said, in summary:

- There were enough indicators within the records he'd seen to suggest the two pension transfers, were on the balance of probability, not unsuitable.
- He didn't believe Lighthouse should be held responsible for the investments within the SIPP.

Mr E however, disagreed with our Investigator's findings. In summary, he said he found the decision surprising. He also said the following:

- He didn't believe the Investigator had fully understood the roles of each of the respective parties and the roles they'd played.
- He felt the Investigator had drawn too many assumptions about the suitability of the original SIPP transfer recommendation; Mr E explained that he only took the SIPP out because Lighthouse told him it was in his best interests.

- He said that he took the SIPP out because he was told it would give a better return than an annuity.
- He's surprised there is very little documentation to show the involvement of Lighthouse. He believes *'they have removed or destroyed records and documents'* showing their involvement.

Our Investigator was not persuaded to change his view as Mr E did not present any new arguments he'd not already considered or responded to already.

Mr E and his representative asked the Investigator to pass the case to an Ombudsman to review that outcome.

After carefully considering the complaint, I issued a provisional decision explaining that I planned to partially uphold Mr E's complaint. As my decision differed to the initial view provided by the investigator, I gave both parties the opportunity to respond with any further information they wished me to consider. Both the business and Mr E's representative responded explaining they accepted my decision with no further comment to make.

### **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.

As I explained in my provisional decision, I think there's two important elements at the heart of this complaint, whether it was right for Lighthouse to move Mr E from his existing plans with NPI and Prudential and also, whether the underlying investments that followed were appropriate. In summary, I'm not persuaded the original advice to transfer to the SIPP was wrong and, secondly, I don't think Lighthouse are responsible for the investment in the Southbank Capital Limited preference shares that Mr E's plan ultimately invested in. However, I'm minded to make a recommendation to compensate Mr E for the failure of Lighthouse to invest the funds transferred from Prudential, before they were eventually invested in the Southbank Capital Limited preference shares. Whilst I appreciate this may not be the response Mr E was hoping for, I'll explain why below.

At the time of Lighthouse's advice to Mr E, he had recently turned 60 years old, was a self-employed photographer and, according to the SIPP application form, was about to retire. Mr E's representatives have stated he was a standard retail investor with no investment experience. They've also explained the two pensions he held, represented a large portion of the customer's wider wealth.

### **The advice to transfer the Prudential and NPI plans**

In my provision decision, I explained that I'd thought carefully about what had happened. Whilst I believe Lighthouse originally discussed the transfer of both the Prudential and NPI plans, I'm satisfied that they actually only facilitated the Prudential transfer. I think that's the case because Mr E's representatives have submitted paperwork to this service that shows the NPI pension was subject to an ongoing complaint in 2003/4 with his previous Adviser. There's also a letter within the file that shows a different IFA made a recommendation to 'park' the protected rights element of the NPI plan in June 2005 with Scottish Equitable. The non-protected rights element of NPI S32 was then moved to the SIPP. So, whilst Lighthouse may have introduced the idea of transferring the S32 plan and discussed the possibility of this with Mr E, given he appeared to delay moving that whilst he awaited the outcome of his

complaint, it was actually another firm, that facilitated that transfer nearly 2 years later. I don't think it is reasonable to hold Lighthouse responsible for the transfer of the NPI plan based on those early discussions alone.

In addition, I think it's really important to be very clear about the respective parts each individual played in the process. I say that because, when Mr E's SIPP received the second transfer payment, from the NPI plan, the 1% initial fee that was agreed at the time of the original advice in September 2003, wasn't paid to Lighthouse in 2005. The fee of £1,679.20 in respect of the second transfer was paid directly to Adviser B. The FCA register clearly shows that at that time, he was no longer working for Lighthouse, or in any other capacity that required regulatory approval. So, whilst this payment likely recognised his earlier involvement, it isn't evidence that he advised Mr E to transfer the NPI pension whilst a representative of Lighthouse.

As this complaint is specifically about the actions of Lighthouse, and I've found that Lighthouse isn't responsible for the transfer of the NPI plan, I've therefore focused my decision on the Prudential plan which I believe the respondent is responsible for.

In my provisional decision, I explained that our usual starting point in determining whether the advice to transfer a pension was appropriate or not is, to refer to the supporting paperwork from the time. This typically includes reviewing the fact-finding document, suitability report, illustrations, ceding scheme information and supporting file notes. Unfortunately, in this instance, Lighthouse have stated that despite their best efforts they can find no records from the time of the original advice, although they do not dispute providing it.

Mr E states he doesn't recall being provided with any supporting paperwork by Lighthouse in 2003 to move his two pensions. But just because a record isn't available, it doesn't necessarily mean the consumer wasn't provided with all the necessary documentation at the time. The Regulators rules around the indefinite retention of records relating to pension transfer advice were introduced in November 2007, and that was after this transfer took place. However, despite the best efforts of firms, records do go missing from time to time and inferences shouldn't be drawn from that.

In the absence of supporting documentation, we have to determine, on balance, what is most likely to have happened. Whilst there is not a file available, I see no reason why an Appointed Representative of a large national advice firm would not undertake the requisite 'know your customer' fact-finding and issue a supporting suitability letter. Mr E said in his submissions to this service, he believes Lighthouse may have *'removed or destroyed records and documents'*. But I don't think that's likely, as a firm would have a far stronger chance of defending a complaint if it were to provide this service with records, even limited in nature, than no records at all. So, I am unable to agree with Mr E's contention on this particular point. Whilst a set of handwritten notes have been provided, those are undated and it isn't immediately clear who created them.

In the submissions made to this service by Mr E's representatives, they've suggested as there's no evidence of any risk profiling or fact-finding, Lighthouse failed to fully understand his financial circumstances and are of the view he has *'no previous experience of investments and wanted to ensure a secure retirement'*. Allied to this, they've stated *'the claimant was not prepared to take any risks with his pension'*. Having carefully considered the evidence presented to me, I'm not wholly convinced by that viewpoint. Whilst there is no doubt Lighthouse have been unable to produce a file evidencing the discussions that took place at the time, Mr E's monies were already invested in stock market based investments before he took advice from them and therefore, he would have had some experience of risk based assets.

So, I need to consider based on the limited information I have, what motivation and justification there may have most likely been, in enacting a transfer. I think a big factor in this case is the point it at which it was undertaken. The advice provided at the time was when schemes were less able to provide flexible features and benefits. Allied to this, I know Mr E had just passed his 60<sup>th</sup> birthday and was self-employed as a photographer. Given he extracted the tax-free cash almost immediately upon transfer along with an income, there was evidently a need for some degree of flexibility and some type of income stream rather than a fixed income that an annuity would've provided. The SIPP would therefore meet that need.

Mr E later took another tax-free cash payment from the SIPP upon receipt of the second pension transfer and continued to extract an income from the plan thereafter. Whilst the SIPP is more likely to have cost more than the Prudential plan in charges alone, particularly at the point it was invested in pure cash, given the evident need for a flexible income, the SIPP recommendation alone doesn't appear unsuitable when compared to the existing plan or, an alternative annuity.

Mr E states he took the SIPP out because he was told it would give a better return than an annuity. Whilst it's difficult to determine what discussions were actually held about annuities at the time, moving to a SIPP would have, in the longer term avoided the necessity to make a decision about purchasing an annuity. And it gave Mr E the freedom to invest in a wider range of assets, as well as regular funds. Finally, I think that's a safe conclusion because in the letter his new IFA wrote to him on 23 June 2005, his adviser at that time does specifically state he didn't want to purchase an annuity. So, I think it unlikely his circumstances would have altered that significantly between the first and second transfers that would've made an annuity suitable at the time of the Prudential transfer.

Overall, I think the SIPP was a suitable recommendation for Mr E, given it allowed him to take tax-free cash and leave his remaining funds invested and so that he could draw-down an income as and when he needed it. I'm satisfied that Mr E could not have achieved this through his Prudential plan so, despite the increased cost of a SIPP I think this aspect of the advice was suitable.

#### The underlying investments within the SIPP

Within Mr E's complaint, he's told us he's unhappy with how Lighthouse managed his money. He doesn't think the shares that were ultimately purchased were right for his needs. But I don't believe it appropriate to comment on the appropriateness of the investment into the Southbank Capital Limited preference shares. That's because I'm not satisfied that Lighthouse are accountable for the transaction. I'll explain why below.

Whilst I note on the SIPP application form that was completed at the time of the transfers, Lighthouse are recorded as providing investment management services to Mr E; I'm not persuaded that they ultimately provided such a service to him because his funds remained in cash. I think though, that's problematic because, the Regulator has long held the view that providing pension transfer advice must dovetail providing suitable investment advice for the proceeds. Leaving the monies in cash would result in Mr E missing out on investment growth potential.

The pension monies, once received from Prudential, were invested in a deposit fund on 18 December 2003. Those monies remained on deposit until June 2006 when they were ultimately invested. The original application form that was completed at the time of the transfer, is silent on the nature of the proposed investments. But I think it's hard to accept that leaving the monies in cash for so long was suitable, even if Mr E didn't wish to take much risk, particularly in light of the fees he was paying for the SIPP.

The SIPP transaction statement provided to this service shows that Lighthouse, after receiving their initial fee from the Prudential transfer, have not taken or received, an ongoing charge from Mr E's SIPP. Their involvement appears limited to the original transfer advice of the Prudential pension.

I went on to explain in my provisional decision that given Lighthouse have been unable to provide a suitability letter from the time of the original recommendation, we'll never know for certain what investment strategy was ultimately agreed but, whatever it was, it doesn't appear to have been enacted within the first several years of the SIPP's life. I think that's where Mr E has been let down by Lighthouse. As I've already said, in its responsibility to provide suitable pension transfer advice, it's also incumbent on them to recommend an appropriate investment for the monies. They were accountable for ensuring his monies weren't sat in cash for a prolonged period of time, being impacted by both inflation and no investment growth potential. So, I think it's fair that Mr E is compensated for this.

I've seen no evidence to suggest Lighthouse are accountable for the purchase of the Southbank Capital Limited preference shares into Mr E's SIPP. Mr E's relationship with Lighthouse appears to have ended well before those shares and subsequent investments were purchased in 2006.

In a copy of the correspondence between Mr E and his representative that's been provided to this service, Mr E stated to them on 11 July 2022, that *'Person X/of PIM Trustees) explained to me his investment strategy and how all investments would be very sound and secure. It was a long process setting up the fund, whice (sic) was fine as there was no particular hurry. Person X popped into to see me at my house on several occasions'*. He went on to state *'I beleive (sic) that Adviser A was involed (sic) in the transfer of my NPI pension fund, and that Adviser B was only involved in the paper work this was why I was unhappy with the way I had to pay him'*.

We know that Adviser A of Lighthouse, who Mr E claims led the conversations about transferring his pensions, saw his authorisation at Lighthouse end in December 2004.

I've already mentioned there's a letter on the file from Mr E's IFA that's dated 23 June 2005 that refers to person X. This letter together with the other letter I've referenced below allows us to conclude that person X was managing Mr E's investments from 2005. This supports when I want to stop Lighthouse's liability for the potential loss.

Paperwork submitted to this service shows that in 2007, Mr E later took up financial advice services from Mattilio Woods plc. A letter was issued to Mr E that states *"Whilst I am regulated to give independent financial advice in relation to the investments of your scheme, I believe this is currently being provided by Person X (at PIM)"*. He went on to say *"For our file it would be appreciated if you could forward me the information in relation to your scheme's Southbank Capital Limited – 8% preference share investment"*

So, I think the evidence supports that it was Person X at PIM Trustees who took over the management of Mr E's pension funds from 2005. And for this reason, I think Lighthouse's responsibility for Mr E's investment loss ended when Mr E's NPI funds were transferred to his SIPP.

Overall, for the reasons set out above, I don't think Lighthouse should have allowed Mr E's Prudential transfer funds to remain in cash for as long as they did. And it is for that reason that I am in part, upholding Mr E's complaint.

## Putting things right

My aim is that Mr E should be put as closely as possible into the position he would probably now be in if he had been given suitable advice.

I think Mr E would have invested differently; I don't think he would've remained invested in cash for as long as he did. It's not possible to say *precisely* what he would have done, but I'm satisfied that what I've set out below is fair and reasonable given the limited information we hold about Mr E's circumstances at that time, the period he had to invest, his objectives and when he invested.

I am limiting the redress to the potential loss of investment growth on the Prudential transfer only as that's what I'm satisfied Lighthouse are responsible for. I believe Lighthouse's liability for any loss should end at the point when the NPI transfer took place because I believe it's clear at that point, a new adviser had taken over responsibility for Mr E's investments.

## What must Lighthouse do?

To compensate Mr E fairly, Lighthouse must:

- Compare the performance of Mr E's investment with that of the benchmark shown below. If the *actual value* is greater than the *fair value*, no compensation is payable.

If the *fair value* is greater than the *actual value* there is a loss and compensation is payable.

Lighthouse should also add any interest set out below to the compensation payable.

- If there is a loss, Lighthouse should pay into Mr E's pension plan to increase its value by the amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.
- If Lighthouse is unable to pay the compensation into Mr E's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the compensation should be reduced to *notionally* allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr E won't be able to reclaim any of the reduction after compensation is paid.
- The *notional* allowance should be calculated using Mr E's actual or expected marginal rate of tax at his selected retirement age.
- It's reasonable to assume that Mr E is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr E would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

Income tax may be payable on any interest paid. If Lighthouse deducts income tax from the interest, it should tell Mr E how much has been taken off. Lighthouse should give Mr E a tax deduction certificate in respect of interest if Mr E asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Funds from the Prudential transfer	Still exists and liquid	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	18 December 2003	Date of NPI transfer – 7 July 2005	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)

### **Actual value**

This means the actual amount payable from the investment at the end date.

### **Fair value**

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, Lighthouse should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any additional sum that Mr E paid into the investment should be added to the *fair value* calculation at the point it was actually paid in.

Any withdrawal from the portfolio should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if Lighthouse totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

### **Why is this remedy suitable?**

I've chosen this method of compensation because:

- Mr E wanted Income with some growth with a small risk to his capital.
- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.
- The FTSE UK Private Investors Income **Total Return** index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.



I consider that Mr E's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr E into that position. It does not mean that Mr E would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr E could have obtained from investments suited to his objective and risk attitude.

### **My final decision**

I uphold the complaint. My decision is that Lighthouse Advisory Services Ltd should pay the amount calculated as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 3 February 2023.

Simon Fox  
**Ombudsman**