DRN-4118996

The complaint

Mr C complains about the advice given by Lighthouse Advisory Services Limited ('Lighthouse') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme, British Steel Pension Scheme ('BSPS') to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

In March 2016, Mr C's employer announced that it would be examining options to restructure its business, including decoupling the BSPS (the employers' DB scheme) from the company. The consultation with members referred to possible outcomes regarding their preserved benefits, which included transferring the scheme to the Pension Protection Fund ('PPF'), or a new defined-benefit scheme ('BSPS2'). The PPF acts as a 'lifeboat' for insolvent DB pension schemes, paying compensation to members of eligible schemes for their lifetime. The compensation levels are, generally, around 90% of the level of the original scheme's benefits for deferred pensions. But the PPF's rules and benefits may differ from the original scheme. Alternatively, members of the BSPS were informed they could transfer their benefits to a private pension arrangement.

In May 2017, the PPF made the announcement that the terms of a Regulated Apportionment Arrangement (RAA) had been agreed. That announcement included that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr C's employer would be set up – the BSPS2. The RAA was signed and confirmed in August 2017 and the agreed steps were carried out shortly after.

Mr C was concerned about what the recent announcements by his employer meant for the security of his pension, so he sought advice. Mr C met with Lighthouse in July 2017 and it recorded some information about his circumstances. It noted that he was 54, married with two children, one of whom was dependent. Mr C was employed earning approximately £34,000. His wife wasn't working - her health was poor and she had a number of medical conditions. They had a mortgage on their home of approximately £90,000, which had a remaining term of just over four years and unsecured (credit card) debt of around £20,000. Mr C's monthly household expenditure was around £2,000. Lighthouse also carried out an assessment of Mr C's attitude to risk, which it deemed was 'lowest medium' – a risk rating of four on a scale of one to ten.

In September 2017, the BSPS provided Mr C with an updated summary of the transfer value of his scheme benefits. These benefits had a cash equivalent transfer value ('CETV') of just over £717,000.
Lighthouse issued a letter summarising its recommendation (a suitability report.) This was dated May 2017 – but given the timing of the fact-find meeting and the transfer analysis report, I think this is incorrect. I think it's more likely this letter was issued in September 2017. This said Mr C wanted to retire at 55 and have the flexibility to control the way his benefits were paid. It said he wanted access to the maximum tax-free cash sum possible from his pension to pay off his mortgage and credit card debt. It said if his debts remained outstanding, the monthly cost of £1,200 would prevent him from retiring. Lighthouse said Mr C had no need for a spouse's pension - he preferred to leave the full value of his pension

to his family instead. It said Mr C didn't mind a reasonable amount of risk in the hope his benefits could be higher in retirement.

Lighthouse recommended that Mr C transfer his pension as it would enable him to meet his aims – repay his debt, access his pension before normal retirement age without penalty, have greater flexibility, maximise his cash lump sum, maximise his income at times to meet his requirements and it offered the potential for tax-free lump sum death benefits. Lighthouse recommended a pension provider and fund that it said was in line with his attitude to risk. The suitability report also noted that ongoing advice was recommended, which would come at a further cost.

Mr C complained to Lighthouse in 2022 about the suitability of the transfer advice. He said his health had become a concern and that because his conditions were life limiting, he was concerned if anything was to happen to him his family might not have enough money to live on.

Lighthouse didn't uphold Mr C's complaint. It said a skilled person appointed by the FCA had previously reviewed the advice and in a report sent to Mr C, this said the advice given by Lighthouse was suitable. The report said that Mr C's objectives could be met by transferring to a flexible arrangement without undue risk to his family's financial security. Lighthouse said after the advice, Mr C would've had the option of joining the new BSPS2 or staying with the existing scheme and moving with it to the PPF. It said it didn't believe either of these options were more financially advantageous to him. It said it understood Mr C's concerns about his health, but it believes this strengthens the advice given rather than make it unsuitable. It said the advice was suitable.

Mr C referred his complaint to the Financial Ombudsman Service. He maintains that he received bad advice to transfer his BSPS benefits to a personal pension.

One of our Investigators looked into the complaint. They thought the advice was unsuitable. They said Mr C wasn't likely to improve on the benefits he was already guaranteed by transferring. And they didn't think Mr C needed to pay off his mortgage by accessing a cash lump sum given that he hadn't done so when he retired. They said the PPF was an alternative to transferring, which could've possibly met his needs but this wasn't properly explored. And they said greater death benefits wasn't a suitable reason to transfer – Lighthouse should've prioritised Mr C's needs and what was best for his retirement. They said Lighthouse should've advised Mr C to retain his DB scheme benefits. And that had it done so, Mr C would've likely subsequently chosen to remain with the scheme and move with it to the PPF given the more favourable early retirement benefits.

Lighthouse disagreed. It said it maintained the position of the skilled person's review of the advice given to Mr C that it was suitable. It said it was in the process of preparing a full submission for the Investigator's consideration, which it would submit no later than the beginning of May 2023.

To date, Lighthouse has not provided a further submission. It's been made aware that the complaint is waiting for an Ombudsman's review.
And it replied to our letter of May 2023 in which we said that the Ombudsman may require it to use the FCA's BSPS-specific redress calculator to calculate any redress that may be owed to Mr C, by agreeing that it would adopt this approach if the complaint was upheld.
So I think if Lighthouse wanted to submit further information for my consideration, it would've done so by now.

So I think it is fair for me to carry on and issue a final 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. This includes the Principles for Business ('PRIN') and the Conduct of Business Sourcebook ('COBS'). 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.

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

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, Lighthouse should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr C's best interests.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for largely the same reasons given by the investigator. My reasons are set out below.

- The transfer value analysis ('TVAS') report, that Lighthouse was required to carry out by the regulator, said that the critical yield - how much Mr C's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme – was 10.97% to match the full pension he'd have been entitled to under the scheme at age 65. Or to match the maximum tax-free cash and reduced pension the scheme would provide at that age, was 8.79%. To match the full pension the PPF would've paid from 65 the critical yield was 5.87% and to match the tax-free cash and reduced pension the PPF would've offered, it was 5.22%.
- Because Mr C's intended retirement age of 55 was less than 12 months away, the actual critical yields weren't calculated, but the report said they were in excess of 50%. And this was for both the benefits available through the existing scheme and the PPF (both full pension and reduced pension with a cash lump sum.)

- I'm mindful that it was known by the point Lighthouse instructed the TVAS that continuing in the BSPS in its existing form wasn't an option for Mr C and so the analysis based on the BSPS benefits was somewhat redundant. But, even if

Lighthouse had waited and carried out analysis of the benefits he'd have been due under the BSPS2 when they became available, because of the short term to retirement, the outcome wouldn't have been any different – the critical yields wouldn't have been calculated.

- I can see in the suitability report Lighthouse incorrectly, and in my view misleadingly, said that the critical yield had not been calculated because it was in excess of minus 20%. It said this meant Mr C's pension fund could afford to lose more than 20% between now and his target retirement date and still match the scheme's benefits. But this was the hurdle rate – the growth rate required without a spouse's pension, no increase in payment and no guarantee – not the critical yield. As I said above, the critical yield was in excess of 50%. And this is clearly demonstrated by the estimated fund value required to match Mr C's benefits under the existing scheme being in excess of £1,200,000 based on a full pension and still a greater than £1,000,000 on a reduced income basis.

- Given this, I think it was clear Mr C was always likely to receive pension benefits, from age 55, of a lower value that those he'd have been entitled to under the BSPS2 or the PPF by transferring and investing in line with his 'lowest medium' attitude to risk. Indeed the suitability report noted that *"...the recommendation to transfer is based upon your desire for maximum tax-free cash, access without reduction, income flexibility and prospect of potential lump-sum rather than spouses death benefits, guarantees and indexation. If your sole objective was to match or better the scheme benefits my advice would be not to transfer and leave your benefits in the Scheme until age 65."*

- Lighthouse recommended the transfer rather than leave his benefits where they were because it said the existing scheme wouldn't allow Mr C to maximise his cash lump for the repayment of his outstanding debt or provide him with the flexibility to change his income to suit his needs. It also said Mr C couldn't retire at 55 because he'd incur an actuarial reduction and without repayment of his debt, it would cost him £1,200 a month.

- While different figures were quoted for Mr C's mortgage in the advice paperwork - £75,000 and £90,000 – it seems his total outstanding debt was around £100,000 - £110,000. Lighthouse said Mr C couldn't achieve the lump sum he required to pay off his debts by retaining his DB scheme benefits. Under the existing scheme, Lighthouse's analysis shows that Mr C was entitled to a lump sum of £96,000 and an income of £14,425. But Lighthouse appears to have ignored the benefits available to Mr C through the PPF at age 55. Due to the more favourable very early retirement factors, according to the TVAS report, at 55 Mr C was entitled to a lump sum of £122,587 and an annual pension of £18,420.

- Furthermore, it appears Lighthouse failed to record an important asset Mr C held at the time of the advice in 2017, which I think supports my view that Mr C didn't need access to a greater cash lump sum than his DB scheme would provide or that he needed to repay all of his mortgage balance to enable him to retire at 55. That asset was a mortgage endowment policy, which is recorded in the subsequent annual review documents Lighthouse provided. In the January 2021 review, it records that Mr C had cashed in his endowment and paid off part of his mortgage. It then says that, when his mortgage ends in March 2021, his mortgage would be paid off using the remaining surrendered endowment funds of £53,000 plus his mortgage overpayments.

- So, when Mr C retired as planned in 2018, while he repaid his unsecured debt from his tax-free cash lump sum (these debts were recorded as being around £20,000), he didn't repay his mortgage in full. Based on him drawing an income of £2,000 a month from his pension, Mr C was able to pay the premium on his endowment policy, make the overpayment to his mortgage and meet his normal mortgage payment. A total of around £850 a month until his mortgage was repaid in full around March 2021.

- Based on this, I think Mr C could've achieved his objective of retiring at 55 by remaining in the BSPS and then moving with it to the PPF. Taking £20,000 from his cash lump sum of £122,000, Mr C could repay his unsecured debts. And while the annual income of £18,400 might have fallen short of his target income of £1,800 a month (I note Lighthouse didn't carry out a detailed income and expenditure analysis to interrogate this figure) and the amount he appears to have needed to sustain the mortgage repayment plan (£2,000 a month) he could've topped up his income each month from the remaining cash lump sum.

- I think the remaining £100,000 would've sustained the additional income Mr C needed (around £4,500 - £5,000 a year) until his mortgage was repaid. And there would still be enough for him to top up his income, if needed, until his state pension became payable at 67. I'm also mindful that it was recorded that Mr C might find part-time work in due course once he retired. And this could've supplemented his income if needed. I think this was a more appropriate way to meet Mr C's retirement goals and income need rather than risking his guaranteed benefits to achieve things.

- Overall, given Mr C didn't need access to a greater tax-free cash lump than his DB scheme would provide, and I'm not persuaded he had a strong need for variable income throughout retirement, I don't think transferring for flexibility was in his best interests.

- Lighthouse recorded that Mr C's wife had no need for a spouse's pension, so Mr C's priority was to leave a potential tax-free lump sum death benefit for his family. But the priority here was to advise Mr C about what was best for his retirement. And despite what Lighthouse recorded, I think the spouse's pension provided by the scheme could've been valuable to his wife in the event of his death. This was guaranteed and it escalated.

- While the CETV figure would no doubt have appeared attractive as a potential lump sum, the sum remaining on death following a transfer was always likely to be different. As well as being dependent on investment performance, it would've also been reduced by the income Mr C drew in his lifetime. And so it may not have provided the legacy that Mr C may have thought it would.

- Overall, I don't think different death benefits available through a transfer justified the likely decrease of retirement benefits for Mr C. And ultimately Lighthouse should not have encouraged Mr C to prioritise the potential for alternative death benefits through a personal pension over his security in retirement.

- Mr C may have legitimately held concerns about how his employer had handled his pension – he was concerned about both the new proposed scheme and the prospect of entering the PPF. But it was Lighthouse's role to objectively address those concerns. At the time of the advice, I think all signs pointed toward the BSPS2 being established. But even if not, as I have demonstrated above, the PPF still provided Mr C with a guaranteed income and the option of accessing tax-free cash – both of which appear to have been sufficient to meet his needs at retirement. Mr C wasn't also likely to improve on these benefits by transferring. So, entering the PPF was not as concerning as he might've thought, and I don't think any concerns he held about this meant that transferring was in his best interest.

Overall, I can't see persuasive reasons why it was clearly in Mr C's best interest to give up his DB benefits and transfer them to a personal pension at this time. And I also haven't seen anything to persuade me that Mr C would've insisted on transferring, against advice to remain in the DB scheme. He had little investment knowledge or experience and nothing suggests to me that he had the requisite confidence or skill to do so. So, I'm upholding the complaint as I think the advice Mr C received from Lighthouse was unsuitable for him.

Putting things right

A fair and reasonable outcome would be for the business to put Mr C, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr C would most likely have remained in the occupational pension scheme and moved with it to the PPF if suitable advice had been given. This is because, given Mr C indicated that he wanted to retire at 55 and take a cash lump sum, the PPF offered more favourable terms for very early retirement in these circumstances over the BSPS2.

Lighthouse must therefore 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.

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 C and the Financial Ombudsman Service upon completion of the calculation together with supporting evidence of what Lighthouse based the inputs into the calculator on.

For clarity, Mr C has retired and he started taking benefits in April 2018 aged 55. So, compensation should be based on him taking benefits at this age.

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 C 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 C redress as a cash lump sum payment,
- explain to Mr C 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 C receives could be augmented rather

than receiving it all as a cash lump sum,

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

Redress paid to Mr C 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 C'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.

Where I uphold a complaint, I can award fair compensation of up to £170,000, 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 £170,000, 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 C the compensation amount as set out in the steps above, up to a maximum of £170,000

<u>Recommendation:</u> If the compensation amount exceeds £170,000, I also recommend that Lighthouse Advisory Services Limited pays Mr C the balance.

If Mr C 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 C can accept my decision and go to court to ask for the balance. Mr C 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 C to accept or reject my decision before 27 November 2023.
Paul Featherstone
Ombudsman