DRN-4171790

The complaint

Mr I complains about the advice given by Lighthouse Advisory Services Limited ('Lighthouse') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a self-invested personal pension ('SIPP'). He says the advice was unsuitable for him and believes this has caused a financial loss.

Lighthouse is represented by a third party in this complaint, but for ease of reading I'll attribute the comments made to Lighthouse.

What happened

In March 2016, Mr I's employer announced that it would be examining options to restructure its business, including decoupling the employer's DB scheme (the 'BSPS') 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). Alternatively, members were informed they could transfer their benefits to a personal pension arrangement.

Mr I was concerned about what the announcement by his employer meant for the security of his preserved benefits in the BSPS. He wasn't sure what to do so he got in touch with an independent financial adviser who introduced him to Lighthouse. Mr I met with Lighthouse in September 2017 and it gathered information about his circumstances and objectives. It noted Mr I was soon to be aged 51 and was married with children. That Mr I and his wife owned their own home which was mortgaged (part interest-only and part repayment) and was due to be fully repaid in seven years. And that Mr I had savings of £7,000 and disposable income of around £1,400 per month between him and Mrs I.

It was recorded that Mr I had a 'low-medium' attitude to risk and that he thought he would retire at 65 but he wanted the option to retire earlier. Lighthouse noted that Mr I wanted to have an income of around £30,000 per year, although his essential expenditure in retirement was only expected to be around £15,600 per year. It was further noted Mr I and his employer were contributing 16% of his salary per month to his employer's new defined-contribution ('DC') pension scheme, equivalent to around £11,000 per year.

In October 2017, members of the BSPS were sent a "Time to Choose" letter which gave them three options – they could stay in BSPS and move with it to the PPF; join the BSPS2 or transfer their BSPS benefits elsewhere. The deadline to make their choice was 11 December 2017 (and was later extended to 22 December 2017).

In November 2017 Lighthouse advised Mr I to transfer his BSPS benefits to a SIPP. It said this would allow Mr I to achieve his objectives of control and flexibility of income, and better death benefits for his wife and children. Mr I accepted this advice in December 2017 and £759,785.04 was transferred from the BSPS to his new SIPP in February 2018.

In 2020 Mr I complained to Lighthouse about the advice. He thought Lighthouse's recommendation that he transfer out of the BSPS was unsuitable and may have caused him a financial loss. In its response to Mr I's complaint, Lighthouse said the transfer was suitable as Mr I and his wife's essential spending in retirement would be met through Mrs I's DB pensions and their state pensions. This meant that Mr I had sufficient capacity to accept risk on his BSPS benefits and the invested fund was only needed to meet their discretionary spending. It also said that the transfer allowed Mr I to access his pension flexibly and pass on the remaining pension to his wife and children in the event of his death, which was likely to be substantial even if Mr I lived to age 100.

Unhappy with Lighthouse's response, Mr I referred his complaint to our Service to investigate.

One of our Investigators looked into the complaint and said it should be upheld. She thought the advice was unsuitable as there was no financial benefit to be had by Mr I transferring out of the DB scheme. She recommended Mr I should be compensated based on him having opted to join the BSPS2 instead.

Lighthouse didn't agree. It said the Investigator's starting point in considering the complaint was flawed – it said the 'presumption of unsuitability' was guidance, not a rule, and that the overarching consideration was whether the adviser had taken reasonable steps to ensure the advice was suitable. It added that the regulator, the Financial Conduct Authority ('FCA'), had required it to carry out a "skilled person review" of the advice given and an independent party had been appointed to carry this out. The skilled person had reviewed the advice, using the FCA's Defined Benefit Advice Assessment Tool ('DBAAT') and found the advice to be compliant.

Lighthouse also said the Investigator's assessment focused too narrowly on whether Mr I could improve on or match his BSPS benefits – it said this was contrary to the guidance the FCA had issued in 2017 (Consultation Paper 17/16 'CP17/16') that firms should not be overly reliant on the critical yield when giving advice as this was leading to poor outcomes for customers. Lighthouse said the Investigator needed to take the DBAAT into account to determine whether the advice was suitable overall. It maintained the advice was suitable as the transfer met Mr I's objectives. Specifically it said the transfer gave Mr I flexibility to take a lower income from the fund and allowed for the capital value to be passed on to Mr I's family on his death. It didn't agree that Mr I was relying on this pension to fund his retirement as it was only needed to support discretionary spending.

The Investigator didn't change her opinion so the complaint was passed to me to decide.

In February 2023 I issued a provisional decision upholding the complaint. I didn't think the advice to transfer out of the BSPS was suitable for Mr I. I thought Mr I was likely to receive lower overall retirement benefits at age 65 and there were no other reasons that would justify the transfer. Ultimately, I thought Mr I could've met all of his objectives by joining the BSPS2 and that he should've been advised to do so. I recommended Mr I should be compensated for the unsuitable advice in line with the Financial Conduct Authority's ('FCA') Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension ('FG17/9'). However, I stated that the FCA had issued a policy statement on 28 November 2022 which set out the new rules and guidance for calculating redress (https://www.fca.org.uk/publication/policy/ps22-13.pdf) and that these rules would come into effect on 1 April 2023.

So, even though Mr I had chosen to have his redress calculated under FG17/9 I said that if the complaint hadn't been settled in full and final settlement by the time the new rules came into effect, I expected Lighthouse to carry out a calculation in line with the updated rules and guidance in any event.

Mr I accepted the provisional decision. Lighthouse ultimately didn't accept the decision. It said the Skilled Person considered they had completed the DBAAT correctly in line with the FCA's instructions as to how it should be used and completed.

Mr I later made some comments about the redress methodology – he was concerned calculations carried out now would be impacted by abnormal economic conditions. Mr I asked whether his complaint could be delayed until the economy was more stable or until the regulator's new rules came into effect.

As there is still disagreement, I'm now providing my final decision on the matter.

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.

Having done so, I'm maintaining my decision to uphold it. I've considered the points made by Mr I and Lighthouse in response to my provisional decision. But overall, I don't think the advice to transfer out of the BSPS was suitable for Mr I, for essentially the same reasons I gave in my provisional decision.

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.

Lighthouse says that its adviser was only required to take reasonable steps to ensure the advice was suitable for Mr I. It says that COBS 19.1.6G is simply guidance, not a regulation that firms are required to follow and that the Investigator erred by only considering this.
I agree that under COBS, Lighthouse was required to take reasonable steps to ensure that its personal recommendation to Mr I was suitable for him (COBS 9.2.1R). However, additional regulations and guidance applies to advising on transferring out of DB schemes. And COBS 19.1.6G says the starting assumption for a transfer from a DB scheme is that it is unsuitable. And that a business should only have considered a transfer out of the scheme if it could clearly demonstrate that the transfer was in Mr I's best interests.

Whilst I accept this is guidance and not a rule per se, I don't think the importance of this guidance can be overlooked. It is intended to reflect the FCA's view (which it has maintained ever since) that retaining safeguarded benefits is in the best interests of most customers – so it is an important guiding principle for any firm giving advice. And in any event, the FCA still requires that an adviser acts in accordance with the best interests of its client under COBS 2.1.1R. And I think that this reinforces that advice to transfer out of a DB scheme should only be given if it is in the customer's best interest to do so.

So, I've considered all of the applicable regulations and guidance here. And having looked at all the evidence available, I'm not satisfied Lighthouse took reasonable steps to ensure the advice to transfer was suitable for Mr I or that it was in his best interests. I'll explain why.

Financial viability

Lighthouse carried out a transfer value analysis report ('TVAS'), as required by the regulator, showing how much Mr I's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield). However, this was based on his existing scheme benefits and Mr I didn't have the option to remain in the BSPS – he either needed to opt into the BSPS2 or move with the scheme to the PPF. Mr I had received his "time to choose" pack by the time the advice was given. And details of the scheme had been provided; the BSPS2 would've offered the same income benefits but the annual revaluation pre-retirement and escalations post-retirement would've been lower.

I note the suitability report says that Lighthouse compared the BSPS benefits instead as it considered that if transferring out of the BSPS was suitable for Mr I, then it would also be suitable advice to not join the BSPS2 (given the benefits available to Mr I would've been lower under that scheme). But I still think the benefits available to Mr I through the BSPS2 should've been factored in with this advice so that he was able to make an informed decision and understood exactly what he was giving up. Instead, the only message Mr I received was that his benefits under the BSPS2 would be less than the existing scheme, without knowing whether this difference was actually significant or whether it would've made a difference to his retirement plans.

According to the fact-find and suitability report, Mr I expected he would retire at age 65, although he wanted the option to retire early. The TVAS dated 23 November 2017 set out the relevant critical yields; at age 65 it was 7.6% if he took a full pension or 5.97% if he took tax-free cash ('TFC') and a reduced pension. The critical yield required to match the benefits provided through the PPF was 4.03% if Mr I took a full pension or 3.68% if he took TFC and a reduced pension. But as I've said above, Mr I remaining in his existing DB scheme wasn't an option. So, the critical yields applicable to the BSPS2 benefits should've been provided. The lower annual increases under the BSPS2 would've likely decreased the critical yields somewhat. But I still think they would've likely been higher than those reflecting the PPF benefits, particularly at age 65.

The advice was given after the regulator gave instructions in Final Guidance 'FG 17/9' as to how businesses could calculate future 'discount rates' 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, they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor.

The closest discount rate to the time of this transfer which I'm able to refer to was published for the period before 1 October 2017, and was 4.1% per year for 13 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 I's low-medium attitude to risk and also the term to retirement. The lowest critical yield was 3.68%, which was based on Mr I taking TFC and a reduced pension through the PPF at age 65. The critical yield if Mr I took the same benefits through his existing scheme at age 65 was 5.97% So, if Mr I were to opt into the BSPS2 and take the same benefits at age 65 the critical yield would've been somewhere between those figures, and likely closer to 5.97%. Given the discount rate of 4.1% and the regulator's middle projection rate of 5%, I think Mr I was most likely to receive benefits of a lower overall value than those provided by the BSPS2 as a result of investing in line with that attitude to risk, though I recognise it's possible he could've slightly exceeded the PPF benefits particularly if he took TFC. But I think there would be little point in Mr I giving up the guarantees available to him through a DB scheme only to achieve, at best, slightly higher benefits than he could've achieved through the PPF. That's particularly the case given the BSPS2 was likely to be confirmed as going ahead, so Mr I would most likely have avoided moving to the PPF in any event.

Lighthouse says that it is unreasonable to base any findings on the discount rate because taking this into account was not required by the regulator when giving advice. It says the historic growth rates are more reliable. While I haven't based my findings on the discount rate on its own, I think it is a reasonable additional consideration when seeking to determine what level of growth was reasonably achievable at the time of the advice. Under COBS 19.1.2 the regulator required businesses to compare the benefits likely to be paid under a DB scheme with those payable under a personal pension by using reasonable assumptions. So, businesses were free to use the discount rate as this would've been considered a reasonable assumption of the likely returns. And in any event, this has been considered in tandem with the regulator's published projection rates, which providers were required to refer to. And it is this combination, along with Mr I's attitude to risk, which leads me to be believe he'd likely be worse off in retirement if he transferred out of the DB scheme. I don't think it is reasonable to rely on historic growth rates, as past performance is no guarantee of future performance.

Lighthouse also says that the relevant critical yield was achievable. But I don't think that's the case given Mr I's desire, as per the pension transfer attitude questionnaire ('PTAQ'), that his pension benefits should only be exposed to limited risk. I think he would've needed to take a higher level of risk to produce returns high enough to ensure he didn't receive lower overall benefits in retirement as a result of transferring his pension.

Lighthouse may also argue that the critical yield is of limited relevance because it is based on the growth required to produce a fund large enough to purchase an annuity on the same basis as the benefits provided by the DB scheme. And Lighthouse says Mr I didn't want an annuity, it said he wanted to take his benefits flexibly. But the regulator required Lighthouse to consider the rate of investment growth that would have to be achieved to replicate the benefits being given up. And I note that in the PTAQ, when asked to rank his priorities, Mr I said that 'Provision for partner's and dependent's pension' was his number one most important objective. So, I think the critical yield was a relevant measure as it demonstrated the growth needed to provide a fund big enough to secure a guaranteed income for Mr I and his spouse.

Furthermore, I don't think Mr I could realistically say with any certainty whether he would want to take a regular income at retirement or not – he wasn't expecting to retire for another 13 years. I'm also mindful that most people if asked would express a preference for flexibility but that doesn't mean it was in Mr I's best interest to prioritise flexibility over a guaranteed income in retirement for him and his spouse (which he could achieve by taking benefits from the DB scheme).

I've also considered the cash flow forecast that Lighthouse produced, which it says demonstrates the transfer was affordable for Mr I and would leave a substantial fund for Mr I to pass on in the event of his death. But I can see that the model is based on Mr I withdrawing substantially less than the benefits he was entitled to under the DB scheme. So, it isn't a fair comparison. I also note that the TVAS showed Mr I's fund would run out at age 96 if the fund achieved a return in line with the regulator's middle projection rate and Mr I took a full pension equivalent to the sum he was entitled to under the BSPS (increasing in line with RPI). But this doesn't factor in any periods of losses or poor performance. And I don't think Mr I could reasonably expect consistent returns of 5% over such a long period of time given his low-medium attitude to risk. So, in reality, I think Mr I's funds had the potential to run out sooner if he transferred out of the scheme.

Given Mr I was likely to receive lower overall retirement benefits by transferring to a personal pension, for this reason alone I don't think a transfer out of the DB scheme was in his best interests. Of course, financial viability isn't the only consideration when giving transfer advice. And Lighthouse has argued that the FCA made clear in CP17/16 that relying on the critical yield alone produces poor outcomes for customers. While I'm mindful that this was a consultation paper and not new rules, I've taken into account that there might be other considerations which mean a transfer is suitable and in Mr I's best interests, despite providing overall lower benefits. I've considered these below.

Flexibility and income needs

It seems one of the main reasons why Lighthouse recommended this transfer was for the flexibility and control it offered Mr I. While Mr I had the ability to retire from age 50 under the scheme, it's evident that Mr I could not take his DB scheme benefits flexibly. Although he could choose to take TFC and a reduced annual pension, Mr I had to take those benefits at the same time.

I note Mr I's only debt was a mortgage, although the exact details of this were not recorded. But based on what was recorded, it seems this would've been paid off before Mr I expected to retire and it doesn't appear there was any motivation on Mr I's part to access his pension to pay this off early. And even if this were the case, Lighthouse noted that Mr I had significant disposable income – I would've expected the adviser to identify this as a means of reducing his debt further before taking money out of a pension to do so. So, I don't think there was any particular need for Mr I to take a large lump sum in retirement, and I note he confirmed in the PTAQ that this wasn't a priority. For this reason, I'm not persuaded that Mr I had any concrete need to take TFC and defer taking his income.

I'm also not persuaded that Mr I had any need to vary his income throughout retirement. To my mind this seems more of a 'nice to have' rather than a genuine objective. Lighthouse noted that Mr I wanted an income of £30,000 at age 65, although his basic needs were likely closer to £15,600 per year. And it said that Mr I was only relying on this pension for discretionary spending. That's because Mr and Mrs I's state pensions and Mrs I's other DB pensions would've produced an income of around £22,000, covering their essential expenditure of £15,600.

Under the BSPS, Mr I could take an annual pension of £44,094 or TFC of £194,820 and a reduced annual pension of £29,223. Under the PPF Mr I could take an annual pension of £36,311.86 or TFC of £190,217.34 and a reduced annual pension of £28,574.08. So the BSPS2 figures would've been somewhere in between. It's clear that Mr I would've had income in excess of his basic needs whichever scheme he took benefits from, when added to Mr and Mrs I's other sources of retirement income. But I don't think this meant Mr I didn't need the DB pension income. It provided a substantial amount of guaranteed income that would've been sufficient to meet virtually all of their essential and discretionary spending.

So, I don't think Mr I had a genuine need for flexibility. But even if he did, I don't think he needed to transfer his DB scheme to a personal pension in order to have flexibility in retirement.

I say this because Lighthouse's point ignores the retirement funds that Mr I would be building up over the next 13 years, through his employer's DC scheme. The fact-find says Mr I was contributing around £11,000 per year to this pension. And even without taking increases in salary or investment growth into account, this pension could be worth over £140,000 after 13 years. And by assuming modest net growth of 2% over the same period, the funds could be worth in the region of £160,000 by the time Mr I retired.

Furthermore, the fact-find noted that Mr I and his wife had savings of around £7,000 (the fact-find said their savings had been substantially higher but had been used to pay for home improvements). Mr and Mrs I also had disposable income of over £1,000 per month, which if added to their savings could have given them potential savings of over £160,000 at retirement. When added to Mr I's potential DC pension pot at retirement, Mr I could've had access to over £300,00 at retirement that he could've used in any way he wanted.

Overall, I'm satisfied Mr I could have met his income needs in retirement through the BSPS2 or the PPF at age 65. And I think this guaranteed income would've allowed Mr and Mrs I to enjoy a comfortable retirement with a sufficient buffer to meet unforeseen costs if and when they arose in the future. I don't find Lighthouse's argument, that Mr I should've transferred out of the DB scheme because it provided him with too much income, to be credible. So, I don't think it was suitable or in Mr I's best interests to advise him to transfer his pension, exposing him to the risks of the financial markets, just to have extra flexibility that he didn't need. That's particularly the case given Mr I's DC scheme could provide him with a degree of flexibility at retirement and would already be exposed to investment risk.

Death benefits

Lighthouse says that Mr I's key objective was to be able to pass on the value of his pension on his death. 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. The lump sum death benefits on offer through a personal pension was likely an attractive feature to Mr I. But whilst I appreciate death benefits are important to consumers, and Mr I might have thought it was a good idea to transfer his DB scheme to a personal pension because of this, the priority here was to advise Mr I about what was best for his retirement provisions. 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 I was prepared to accept a lower retirement income in exchange for higher death benefits.

I also think the existing death benefits attached to the DB scheme were underplayed. Mr I was married and so the spouse's pension provided by either the BSPS2 or the PPF would've been useful to his spouse if Mr I predeceased her. This pension, when added to Mrs I's own pension entitlements of almost £14,000, would've been sufficient to meet her need of around £30,000 per year. I don't think Lighthouse made the value of this benefit clear enough to Mr I. The spouse's pension was guaranteed and it escalated – and under the BSPS2 the spouse's pension would be calculated as if no TFC had been taken. Furthermore, this benefit was not dependent on investment performance, whereas the sum remaining on death in a personal pension was.

The TVAS showed Mr I's pension fund would be depleted by age 96 if it grew in line with the middle projection rate and he withdrew the same income he was entitled to under the scheme. So there may not have been a large sum left, if any at all, to pass on when he died particularly if he lived a long life or investment returns were poor. In any event, Lighthouse should not have encouraged Mr I to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

In addition, I've explained above that Mr I's DC pension could've been worth around £160,000 by the time he retired. And it doesn't appear that Mr I had a need to access this pension, meaning he could leave it to continue growing beyond his retirement. Mr I could've nominated any beneficiary/beneficiaries of his choosing to receive the remaining funds in this pension on his death.

It also seems likely Mr I would've opted to take some or all of his TFC entitlement from the DB scheme when he retired as that is generally the most tax efficient way to access a pension. Mr I would be able to take at least £190,000 and as he didn't have any plans for this sum, at least none noted when the advice was given, he could've added this to whatever savings he had and invested it for the benefit of his wife or children in a tax-efficient way such as through a trust. Any excess pension income also could've been redirected in this way. So, I think it's clear Mr I 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 didn't die with him. And had Lighthouse explained to Mr I that he could meet his objective of providing extra death benefits for his family, without giving up his own guaranteed pension or his wife's spouse's pension, I think Mr I would've been satisfied with this.

Lastly, if Mr I genuinely wanted to leave a legacy for his wife and children, which didn't depend on investment returns or how much of his pension fund remained on his death, I think Lighthouse could've explored life insurance. This doesn't appear to have been explored in any meaningful way and Lighthouse's argument that taking out life insurance didn't address Mr I's concern that his pension would die with him doesn't hold water. As I've said above, Mr I had multiple ways of ensuring some of his pension could be passed on when he died.

Overall, I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr I. And I think Mr I could've met his objective of increasing the death benefits available to his family without risking his guaranteed pension.

Control or concerns over financial stability of the DB scheme

It's clear that Mr I, like many employees of his company, was concerned about his pension. His employer had recently made the announcement about its plans for the scheme and he was worried his pension would end up in the PPF. He'd heard negative things about the PPF and he said he preferred to have control over his pension fund. It seems Mr I also had concerns about the BSPS2 because of the way his employer had changed the benefits in the past. So it's quite possible that Mr I was leaning towards the decision to transfer because of the concerns he had about his employer and his negative perception of the PPF.

It's well documented that this was a period of uncertainty for people like Mr I. But this only serves to emphasise the need at that time for a balanced assessment of the options available and ultimately the need for suitable advice. So it was Lighthouse's obligation to give Mr I an objective picture and recommend what was in his best interests.

As I've explained, by the time the advice was given details of BSPS2 were known and it seemed likely it was going ahead. So, the advice should've properly taken the benefits available to Mr I through the BSPS2 into account and I think this should've alleviated Mr I's concerns about the scheme moving to the PPF. And if Mr I's concerns about his employer's influence on his pension remained, I think it should've been explained that his employer and the pension scheme trustees were not entirely one and the same. So Mr I's employer didn't have the control over the pension Mr I thought it did.

Even if there was a chance the BSPS2 wouldn't go ahead, I think that Lighthouse should've reassured Mr I that the scheme moving to the PPF wasn't as concerning as he thought. The income available to Mr I through the PPF was still far in excess of the minimum income he thought he needed at retirement, and he was unlikely to be able to significantly improve on this by transferring out. Although the increases in payment in the PPF were lower, the income was still guaranteed and was not subject to any investment risk. So, I don't think that these concerns should've led to Lighthouse recommending Mr I transfer out of the DB scheme altogether.

I also think Mr I's desire for control over his pension benefits was overstated. Mr I was not an experienced investor and I cannot see that he had an interest in or the knowledge to be able to manage his pension funds on their own. Indeed, the recommendation letter suggested he would remain reliant on professional advisers. So, I don't think that having control was a genuine objective for Mr I – it was simply a consequence of transferring away from his DB scheme.

DBAAT Tool

Lighthouse says that the advice needs to be looked at as a whole and that the output of the DBAAT tool should be an important consideration here. While I am satisfied I have already considered the suitability of the advice as a whole, taking account of Mr I's objectives, I've also considered this.

The skilled person completed the DBAAT tool in September 2020 and this demonstrated the advice was compliant. Lighthouse maintains this was completed correctly and in line with the regulator's guidelines. However, having carefully considered the answers the skilled person gave to the questions tool asked, there are several I disagree with which I think could have led to a different result.

For example, in the section titled 'Examples of unsuitability' the skilled person answered "No" to the following examples:

2) The aim of the transfer is to maximise death benefits but there is insufficient evidence on the client file to demonstrate why this is in the client's best interests.

3) The aim of the transfer is to access flexible benefits but there is insufficient evidence on the client file to demonstrate why this is in the client's best interests.

9) The firm's transfer analysis does not support a recommendation to transfer.

However, I disagree with these answers. I've explained at length above why I don't think transferring out of the DB scheme to maximise death benefits or to obtain flexibility was in Mr I's best interests or suitable for him. And I've also explained that the TVAS showed that the transfer wasn't financially viable given Mr I's risk appetite.

Furthermore, the skilled person answered "Yes" to the following example of unsuitability:

1) The client is, or will be reliant on income from this scheme.

As a consequence, the DBAAT flagged the transfer as being potentially unsuitable, but ultimately the transfer was deemed suitable overall. The reason given for this was that a reasonable assessment of Mr I’s core expenditure was around £23,000 per year and the majority of this would be covered by other income sources. However, as I’ve said above, I don’t think it is fair or reasonable to have expected Mr and Mrs I to take a lower retirement income covering their core expenses only and use their other pensions instead in order to justify the transfer. And in any event, Mr I said they needed £30,000 per year in today’s terms in retirement. This would not have been met by their other guaranteed pensions.

It was also suggested Mr I could rely on the benefits he’d be accruing in the intervening years through his DC scheme to provide the extra income he needed. But I don’t think it is logical to sacrifice guaranteed benefits and subject them to investment risk when it is acknowledged that Mr I would have to rely on other funds which were already subject to investment risk to meet his income need in retirement.

Overall, for the reasons given, I’m not persuaded that using the DBAAT tool demonstrates that the advice was suitable for Mr I.

Summary

I don’t doubt that the flexibility, control and potential for higher death benefits on offer through a personal pension would have sounded like attractive features to Mr I. But Lighthouse wasn’t there to just transact what Mr I might have thought he wanted. The adviser’s role was to really understand what Mr I needed and recommend what was in his best interests.

Ultimately, I don’t think the advice given to Mr I was suitable. He was giving up a guaranteed, risk-free and increasing income within the BSPS2 (or the PPF). By transferring to a SIPP Mr I was, in my view, likely to obtain lower overall retirement benefits at age 65. And I don’t think there were any other particular reasons which would justify the transfer and outweigh this. So, I don’t think it was in Mr I’s best interests for him to transfer his DB scheme to a personal pension when he had the opportunity of joining the BSPS2.

I appreciate that the BSPS2 hadn’t been confirmed when the advice was given, but I think it was clear to all parties that it was likely to be going ahead. Mr I had 13 years before he expected to retire, and while he liked the idea of retiring early, this was not something he was expecting to do. So, I don't think that it would've been in his interest to accept the reduction in benefits he would've faced by the scheme entering the PPF, as it wouldn't be offset by the more favourable reduction for very early retirement. And by opting into the BSPS2, Mr I would’ve retained the ability to transfer out of the scheme nearer to his retirement age if he needed to. Lighthouse says that any transfer value offered to transfer out of the BSPS2 would likely be at a reduced rate, however that wasn’t a good enough reason to transfer out of the scheme entirely.

Also, Mr I was married, and under the BSPS2 his wife’s pension would be set at 50% of his pension at the date of death, and this would be calculated as if no lump sum was taken at retirement (if Mr I chose to do so). The annual indexation of his pension when in payment was also more advantageous under the BSPS2. So, I think Lighthouse should’ve advised Mr I to opt into the BSPS2.

Lighthouse may say that regardless of the advice given, Mr I made an informed choice to proceed with the transfer and Mr I would’ve transferred in any event.

I accept that Lighthouse disclosed the risks of transferring to Mr I, and provided him with a significant amount of information in the suitability report. But ultimately it advised Mr I to transfer out, and I think Mr I relied on that advice.

I'm not persuaded that Mr I would've insisted on transferring out of the DB scheme, against Lighthouse's advice. I say this because Mr I was an inexperienced investor and this pension accounted for all of his retirement provision at the time. So, if Lighthouse had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think he would've accepted that advice.

I'm not persuaded that Mr I's fear about the PPF or the concerns he had with his employer were so great that he would've insisted on the transfer knowing that a professional adviser, whose expertise he had sought out and was paying for, didn't think it was suitable for him or in his best interests. And if Lighthouse had explained Mr I was unlikely to significantly improve on the benefits available to him through the PPF if he transferred out, and that he could meet his income needs in retirement without risking his guaranteed pension, as well as providing extra death benefits, I think that would've carried significant weight.

I'm aware that in some communications with Lighthouse after the advice was given, Mr I was actively chasing Lighthouse on the progress of the transfer. But Mr I had received advice from Lighthouse that he should transfer out of the DB scheme. So, I think his communications have to be considered in that context. It isn't reasonable to assume that he'd have behaved the same way if he'd been advised to opt into the BSPS2. So, I don't think this demonstrates he'd have gone against Lighthouse's advice.

In light of the above, I think Lighthouse should compensate Mr I for the unsuitable advice, by undertaking a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice.

Mr I has raised some concerns about the impact of today's market conditions on the redress calculation. He says that this won't necessarily reflect the market conditions when he actually retires. I understand Mr I's concerns here. But ultimately the regulator has set out what it deems to be appropriate redress to put right instances of unsuitable defined benefit pension transfer advice. And I see no reason to depart from this in the circumstances of this complaint.

Putting things right

A fair and reasonable outcome would be for the business to put Mr I, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr I would most likely have opted to join the BSPS2 if suitable advice had been given.

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 I and our Service upon completion of the calculation.

For clarity, Mr I has not yet retired, and he has no plans to do so at present. So, compensation should be based on the scheme's normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

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 I'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 I redress as a cash lump sum payment,
- explain to Mr I 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 I receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr I accepts Lighthouse's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr I 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 I's end of year tax position.

Redress paid to Mr I as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. 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 I'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 £160,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £160,000, I may recommend that the business pays the balance.

My final decision

Determination and money award: I uphold this complaint and require Lighthouse Advisory Services Limited to pay Mr I the compensation amount as set out in the steps above, up to a maximum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I will also recommend that Lighthouse Advisory Services Limited pays Mr I the balance.

If Mr I accepts my final decision, the money award becomes binding on Lighthouse Advisory Services Limited.

My recommendation would not be binding. Further, it's unlikely that Mr I can accept my decision and go to court to ask for the balance. Mr I may want to consider getting independent legal advice before deciding whether to accept any final decision.

Lighthouse Advisory Services Limited should provide details of its calculations to Mr I in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 10 July 2023.

Hannah Wise
Ombudsman