DRN-4185399

The complaint

Mrs G complains about the advice Lighthouse Advisory Services Limited ('Lighthouse') gave to her to transfer the benefits from her defined-benefit ('DB') occupational pension scheme, the British Steel Pension Scheme ('BSPS') to a personal pension. She says the advice was unsuitable for her and believes this has caused a financial loss.

Since the date of the advice another firm has acquired Lighthouse's business and responded to the complaint. But as it was Lighthouse that gave the advice, for ease of reading, I will only refer to it within this decision.

What happened

In March 2016, Mrs G'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 Mrs G'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.

In the meantime, In July 2017, the BSPS provided Mrs G with a summary of the transfer value of her scheme benefits. At that time her benefits had a cash equivalent transfer value ('CETV') of £423,693.

Mrs G approached Lighthouse for advice about her pension. It carried out a fact-find with her and an assessment of her attitude to risk. It noted Mrs G was 48 years old, married to Mr G who was four years older. They were both working. They had no dependent children. They owned their own home subject to a mortgage of £58,000. They were paying that off at £500 a month and had eleven years remaining on its term. They had two loans for a total of £33,000, which would be repaid in five years. Mrs G had joined her employer's recently set up defined contribution ('DC') scheme. Together she and her employer were contributing the equivalent of around 12% of her salary towards that each year. It said she had a low to medium risk tolerance.

In September 2017 the BSPS recalculated Mrs G's CETV to take account of the RAA. The amended figure was £437,509.

In October 2017, members of the BSPS were sent a "time to choose" letter which gave them the options to either stay in the BSPS and move with it to the PPF, move to the BSPS2 or transfer their BSPS benefits elsewhere.

The same month, October 2017, Lighthouse carried out a transfer value analysis ('TVAS') report which set out the growth rates required from an alternative personal arrangement (the critical yields) to match the DB scheme benefits. It then gave Mrs G its suitability report setting out its analysis and recommendations. In brief it recommended that she should transfer her DB scheme benefits to a named personal pension and invest in funds suitable to her attitude to risk. It said that doing so would allow her to retire at age 55; give her flexible access to her pension fund and allow her to leave a lump sum for her husband in the event of her death.

Mrs G accepted Lighthouse's recommendation and transferred her funds to the named personal pension.

In 2021 Lighthouse wrote to Mrs G offering a review of its advice. A third party firm conducted that review and said it found Lighthouse's advice suitable. Mrs G then complained to Lighthouse via the Financial Ombudsman Service. Lighthouse didn't uphold her complaint.

Mrs G asked us to consider her complaint. One of our Investigators looked into it. He didn't think Lighthouse's advice was suitable for Mrs G. So he said it should establish if she'd suffered a financial loss as a result of its advice. The Investigator said Mrs G had confirmed she intended to retire in 2023 (at age 55) and said that in those circumstances she would have benefitted from the lower actuarial reductions for early retirement from the PPF compared with the BSPS2. So he said that any loss calculation should be on the basis that Mrs G retired at 55 and took benefits from the PPF.

Lighthouse said it didn't agree with our Investigator's complaint assessment but said it wouldn't be able to reply in the timescale he set out. He extended the deadline for a reply. Lighthouse didn't provide a further substantive response before that deadline expired, and another Investigator notified Lighthouse that they would refer the complaint for an Ombudsman's review.

In June 2023 Lighthouse twice said it was in the process of 'finalising' its full response. It said that if an Ombudsman did review the matter then following our "usual practice", it asked for the Ombudsman to share a provisional or draft decision before issuing their final decision. To date Lighthouse hasn't sent us any further correspondence on the matter. So, as things couldn't be resolved informally, the complaint was referred to me to make 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 Businesses ('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 it was in Mrs G's best interests.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for broadly similar reasons to those our Investigator gave.

Why I'm not issuing a provisional decision

Lighthouse asked that prior to issuing a final decision I issue a provisional decision. Doing so would allow both sides to comment on that provisional decision before I came to my final determination.

Lighthouse said issuing a provisional decision is our "usual process". It's wrong in that respect. That is, it is not our "usual process" to issue a provisional decision before making a final determination. Instead our common practice is, in the first instance, to issue a final decision unless the Ombudsman concerned believes a provisional decision is required.

I would usually only issue a provisional decision where my findings are materially different to the Investigator's. For example if my conclusions are not the same as the Investigator's or my reasons for arriving at those conclusions are notably different. Similarly if I think our Investigator made a mistake when recommending redress and my award would be significantly different, then I may issue a provisional decision and invite the parties to comment on that.

In other situations, where I believe it's fair and reasonable to do so, I may choose to issue a provisional decision even where my final determination is fundamentally the same as the Investigator's. But, that choice is at my discretion, I'm not under any obligation to do so.

In this case, I've considered everything submitted by both parties, including Lighthouse's file with the relevant documents at the time of the advice. Having done so I'm upholding the complaint for broadly similar reasons to those given by the investigator. In those circumstances I don't find that a provisional decision is required or warranted.

In arriving at that stance I'm aware that Lighthouse has yet to provide us with its finalised response to our Investigator's complaint assessment. However, he issued his assessment In April 2023. He then extended the deadline for Lighthouse to reply. It didn't do so before that deadline passed. Lighthouse has since, twice, told us it was in the process of providing its finalised response. But a further five months has gone by and it still hasn't done so. I think it's had more than enough time to reply, make any further submissions, arguments or observations it wished to. But it hasn't done so. In those circumstances I think it's fair and reasonable to issue my final decision without delaying matters further.

Reasons for my decision

Lighthouse obtained a TVAS report which showed the relevant critical yields to match the benefits from the DB scheme at ages 55 and 65. At Mrs G's preferred retirement age of 55 the critical yields were 13.13% if she took a full pension or 8.88% if she took a tax free cash ('TFC') lump sum and a reduced pension.

Lighthouse's suitability report said the critical yields were high and matching them would be "difficult". It added that if Mrs G's sole objective was to match or better the scheme benefits, its advice would be to remain in the DB scheme until normal retirement age. In other words Lighthouse recognised that transferring would most likely mean Mrs G would struggle to match the benefits she could receive from the DB scheme by transferring. I agree with Lighthouse's analysis here. But I don't think it did enough to make it clear to Mrs G that she was, potentially, making herself poorer in retirement by transferring.

Lighthouse's suitability report said that if Mrs G retired at age 55 she could use a proportion of her TFC to pay off any remaining debts – mortgage, loans etc. That would reduce her outgoings and it calculated that she would then require a net income of £824 a month. It's report isn't clear on this point, but it would appear it calculated that required monthly sum on the basis that Mr G would continue working until age 67 – as he planned to do. It also said Mrs G would need to increase her drawdown amount, once her husband retired at age 67 – when she was 63 – until she turned 67. At that time, her own state pension became payable and she could reduce her drawdown figure.

The suitability report said Lighthouse had run a "retirement modeller" – a cash flow model – showing Mrs G drawing down income as described above. It said that model showed that Mrs G's funds would last well beyond her life expectancy and until she was 120. But I don't find Lighthouse's model reliable.

There are two cash flow models on file that I've seen. They are dated in August and September 2017 respectively. The first doesn't allow for Mrs G taking any TFC and shows her funds would run out at age 96, not 120. So I don't think that was the model it was referring to in its suitability report. The September model does allow for Mrs G taking TFC, but it doesn't show an increase in drawdown for the four years between her husband retiring and herself turning 67.

Further, the suitability report says the model is based on an "example interest rate" of 5% a year. I take that to mean a growth rate of 5% a year. And while achieving that rate might not have been impossible, given the volatility of the investment markets consistent growth at that level, particularly for someone with a low to medium attitude to risk, could be difficult to achieve.

To put this into context, prior to October 2017 the Financial Ombudsman Service published future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. I'll explain that a discount rate is a measure of what an investment is likely to grow at in the future. They provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor. In Mrs G's case the discount rate for retirement at age 55 was 3.3%. Somewhat less than the cashflow model's rate of 5%. So the prospect of a 5% year-on-year return seems ambitious.

Also, if there was a sustained period of poor performance or the investments suffered losses then there was a very real chance that Mrs G's fund would grow at a much slower rate. If that happened Mrs G could deplete her pension fund earlier than Lighthouse's model shows. In addition, Lighthouse's model isn't "stress tested" to allow for the possibility of market crashes or poor performance. So I don't think it paints a complete picture of the likely future scenarios Mrs G could be facing in retirement.

Further, as I've said above, Lighthouse itself recognised Mrs G would be unlikely to match or exceed the benefits from her DB scheme by transferring. So, for that reason alone, I don't think a transfer out of the DB scheme was in her best interests. Instead I think Lighthouse should have advised Mrs G to remain in the DB scheme.

Of course matching the DB scheme income isn't the only consideration when giving transfer advice. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits, as Lighthouse has argued in this case. I've considered this below.

Lighthouse said transferring allowed Mrs G the flexibility to take early retirement at age 55, while paying off any remaining debts. But I don't think Mrs G needed to transfer out of her DB scheme, and put her funds at risk, in order to retire early.

Lighthouse didn't quantify what Mr and Mrs G's debt position was likely to be at age 55. But when it completed the fact-find their two loans were due to be repaid in five years – before Mrs G retired. And her mortgage had eleven years remaining. So given they would have been repaying that for a further six full years or more before her retirement then the mortgage could have been reduced to somewhere around £26,500.

Lighthouse said Mrs G required an income of £824 a month or £9,888 a year. Its TVAS showed that the BSPS would pay her TFC of £65,983 and a reduced yearly pension of £9,897 at age 55. So, she could have taken benefits from the DB scheme and still retired early. However, there was an even more favourable position for her, which was to consider allowing her pension to move to the PPF and taking sums from that at age 55.

The manner in which the PPF and the DB scheme work out actuarial reductions for early retirement is different. The PPF is on the whole more generous the earlier a pension is taken. And the earliest Mrs G could take her PPF benefits is age 55. Mrs G's entitlement from the PPF at age 55 was TFC of £81,849 and a yearly pension of £12,306. Those sums are over 24% higher than the BSPS benefits. So she could have been considerably better off in the early years of retirement by opting to allow her pension to move to the PPF. Those sums were guaranteed and the yearly pension escalated. It wasn't dependent on investment performance.

It follows that if Mrs G had allowed her pension to move to the PPF she could have comfortably paid off any anticipated remaining debts and still had a considerable lump sum left over. She could, if she chose, have used the remaining TFC to support her income for the four years between Mr G retiring and her own state pension becoming payable. So I don't think Mrs G needed to transfer to a personal pension in order to be able to retire at age 55.

I note that Lighthouse's suitability report was silent on Mrs G's benefit entitlements from the PPF. It did refer to the critical yields at age 65 to match the PPF benefits – without actually stating what those were. But it didn't give Mrs G any figures at all for what she could be entitled to from the PPF at age 55. And given this was her intended retirement age – and there was a distinct possibility of the BSPS moving to the PPF – I don't think it gave her enough information with which to make an informed decision about what might be best for her.

That said, it's true to say that Mrs G couldn't have had the same level of flexible access to her funds from the PPF as she could from a personal pension. If she'd wanted to take a TFC lump sum, then she would have had to take that at the same time as drawing a regular income from the PPF. Whereas the personal pension would allow her to draw down funds as she saw fit.

But while I can see why accessing funds flexibly might have been an attractive prospect for her, there was no requirement for her to give up the safeguarded benefits from the PPF in order to have some flexible access to retirement funds.

Mrs G could have set aside any surplus TFC sums to access flexibly if she needed. Further she and her employer had begun contributing to a recently set up DC pension scheme. And, by the time she was 55 Mrs G could anticipate that her DC pension pot would be in the region of £30,000. The nature of a DC pension means this already provided Mrs G with flexibility – she wasn't committed to take its benefits in a set way. So she could have taken sums as and when required and adjusted the income she took from it according to her needs. This combined with her income from the PPF would have likely given her flexible access to pension funds if that was what she required. So she didn't need to transfer from the DB scheme to have some flexible access to cash. It follows that I don't think it was in her best interests to recommend this course of action and potentially to put her DB benefits at risk by doing so.

I'm aware the PPF would have provided Mrs G an income that was higher than her needs. So she would have had to pay tax on her regular income above her marginal tax rate which was £11,500 in 2017. However, that requirement to pay tax would simply indicate that she would be better off. And I think it's rare for people to complain that they have too much income. And having money coming in above her target level would simply mean Mrs G would have extra disposable income to enhance her lifestyle with, or even to put towards a legacy in the event of her death if that's what she wished to do.

That brings me to Lighthouse's recommendation that transferring allowed Mrs G to leave any residual pension to Mr G on her death. I'll explain that the PPF would pay 50% of Mrs G's pension entitlement to Mr G after she died. In contrast, a personal pension would allow Mr G to access whatever remained within her pension pot in whatever manner he chose. But I don't think the possibility of more attractive death benefits was a sufficient reason to recommend a transfer.

Lighthouse's priority was to advise Mrs G about what was best for her retirement provisions. A pension is primarily designed to provide income in retirement – not a lump sum after death. But in transferring out of her DB scheme Mrs G was essentially giving up a guaranteed, index linked, increasing income in retirement, for the potential for a lump sum for Mr G that he may not receive for many years to come, or indeed at all if he dies before her.

I don't doubt that the CETV figure would have appeared an attractive sum to be able to leave as a legacy. But, in reality, the amount remaining on death following a transfer was always likely to be different. As well as being dependent on investment performance the fund would be depleted by Mrs G's withdrawals from it in her lifetime. So, how much would remain in it on her death depended on a number of factors. And there may not have been much left in her personal pension if she lived a long life, the investments performed poorly, or if she took large sums from it early in her retirement.

It follows that I don't think different death benefits available through a transfer justified the potential decrease of retirement benefits for Mrs G. And ultimately Lighthouse should not have encouraged her to prioritise the potential for alternative death benefits through a personal pension over her security in retirement.

Overall, I can't see persuasive reasons why it was clearly in Mrs G's best interest to give up her DB benefits and transfer them to a personal pension. I also haven't seen anything to persuade me that Mrs G would've insisted on transferring, against advice to remain in the DB scheme and allow it to move to the PPF. So, I'm upholding the complaint as I think the advice Lighthouse gave to Mrs G was unsuitable for her.

Putting things right

A fair and reasonable outcome would be for the business to put Mrs G, as far as possible, into the position she would now be in but for the unsuitable advice. I consider Mrs G would most likely have remained in the DB scheme and moved with it to the PPF if Lighthouse had given suitable advice.

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 Mrs G 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, Mrs G has concrete plans to retire at age 55. So, compensation should be based on her 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 Mrs G 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 Mrs G redress as a cash lump sum payment,
- explain to Mrs G before starting the redress calculation that:
    - the 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 the redress prudently is to use it to augment her DC pension
- offer to calculate how much of any redress Mrs G receives could be augmented rather than receiving it all as a cash lump sum,
- if Mrs G accepts Lighthouse's offer to calculate how much of the redress could be augmented, request the necessary information and not charge Mrs G for the calculation, even if she ultimately decides not to have any of the redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mrs G's end of year tax position.

Redress paid to Mrs G 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 Mrs G'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 Mrs G 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 Mrs G the balance.

If Mrs G accepts this decision, the money award becomes binding on Lighthouse Advisory Services Limited.

My recommendation would not be binding. Further, it's unlikely that Mrs G can accept my decision and go to court to ask for the balance. Mrs G 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 Mrs G to accept or reject my decision before 27 December 2023.

Joe Scott
Ombudsman