

The complaint

Mrs F complains about the advice given by Lighthouse Advisory Services Limited (Lighthouse) to transfer the benefits from her defined-benefit ('DB') occupational pension scheme to a personal pension. She says the advice was unsuitable for her and believes this has caused a financial loss.

Since the events complained about another firm has acquired Lighthouse's business and has responded to the complaint on its behalf. That firm instructed professional representatives to reply to our investigator's assessment of the complaint. However, for ease of reading I will refer to the acquiring firm's and the representatives' comments as being Lighthouse's.

Provisional decision

On 6 April 2023 I issued a provisional decision. For ease of reference I've copied the relevant extracts below. I said:

"What happened

In March 2018 Mrs F had accepted voluntary redundancy from her job. She approached Lighthouse for advice about her pension provision. Lighthouse had previously advised her husband, Mr F, to transfer the funds from his DB scheme to a personal pension.

Lighthouse carried out a fact-find to gather information about Mrs F's circumstances and objectives. Amongst other things it noted that Mrs F was 54, married with two non-dependent adult children. She was due to take redundancy in the coming months and expected to receive a severance payment of £92,000 gross. She'd been earning a salary of over £121,000 a year. Her husband was still working and earning around £60,000 a year. They owned their own home which had a value of £610,000 with an outstanding mortgage of £460,000. They had another, non-liquid, asset worth around £200,000 and savings of £30,000. Lighthouse said Mr and Mrs F's monthly outgoings, including their mortgage repayments of £2,900, were £5,000.

Lighthouse obtained information about Mrs F's DB scheme and received transfer value analysis reports ('TVAS'). It received three such reports with slightly different figures. I've quoted the figures from the last report, produced in August 2018 here. It noted that Mrs F's DB scheme had a cash equivalent transfer value ('CETV') of £927,754. The DB scheme would pay Mrs F a yearly pension at the scheme's normal retirement age of 65 of £69,012 together with a lump sum tax-free cash ('TFC') of £90,249, or she could take a reduced pension of £52,674 and TFC of £314,050. At Mrs F's preferred retirement age of 57 the DB scheme would pay her a yearly pension of £34,185 with TFC of £90,249 or a reduced pension of £26,959 and TFC of £179,727. Lighthouse said that, after discussion with Mrs F they had agreed that her attitude to risk was "lowest medium" with a score of four on a scale from one to ten.

Lighthouse produced a suitability report setting out its analysis and its recommendation. There are four versions of the report on file, one in June 2018, two dated the same date in

July (but containing different figures) and one in August 2018. I've referred to the findings from the last of those reports dated August 2018 in this decision. Amongst other things Lighthouse said that Mrs F's objectives were:

- Flexible access to her income.
- The ability to retire early.
- Lump sum death benefits.
- TFC to be able to repay her mortgage at age 57 or before.
- An increasing pension in retirement.
- A spouse's/dependents' pension on death.

Lighthouse recommended Mrs F should transfer her DB scheme funds to a named personal pension. Mrs F accepted that recommendation.

In 2021 Mrs F complained to Lighthouse. In short she said that she didn't think its advice was suitable for her. She said she had only recently read its suitability report and didn't believe it was accurate.

Lighthouse replied. It didn't uphold the complaint. Amongst other things it said its advice was suitable for her because it allowed her to achieve her objectives.

Mrs F brought her complaint to us. One of our Investigator's looked into it. He didn't think Lighthouse's advice was suitable for Mrs F. So he recommended upholding the complaint. He said that Lighthouse should pay Mrs F appropriate compensation including £400 to address her distress and inconvenience caused by its unsuitable advice.

Lighthouse didn't agree with our investigator's assessment of the complaint. It provided a detailed response. Amongst other things it remarked that it was reasonable for it to assume that Mrs F would have read the documents it sent to her. It said the Investigator's starting point in considering the complaint was flawed – it said the regulator's – the Financial Conduct Authority ('FCA') – 'presumption of unsuitability' was guidance only, 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 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 with regulations.

Lighthouse also said the Investigator's assessment focused too narrowly on whether Mrs F could improve on or match her scheme 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 investment growth rates (known as 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 decide whether the advice was suitable overall. It repeated that the advice was suitable as the transfer met Mrs F's objectives. Specifically, it said the transfer gave Mrs F the flexibility to retire early and vary the income she took from the fund. It also meant that Mrs F could pass on any residual fund to her husband or her children in the event of her death.

The complaint was referred to me to determine.

What I've provisionally 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.

In bringing this complaint and in responding to it both Mrs F and Lighthouse have made many detailed points. I've considered everything on file. But in this decision I don't intend to address each and every issue raised. Instead I will focus on what I see as being the key points at the heart of Mrs F's complaint and the reasons for my decision.

Further, I'm aware that Mr F has also complained about Lighthouse's advice to transfer the funds from his own DB scheme to a personal pension in 2017. And both Mrs F and Lighthouse have referred to that advice both when complaining and in response to it. For the purposes of context and for completeness I have occasionally referred to that process below. But, as we are looking at Mr F's complaint separately, I don't intend to make any comments on the merits of that within this 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 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.

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.

The regulator states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. This is known as the presumption of unsuitability. So, I think Lighthouse should have only considered a transfer if it could clearly demonstrate that it was in Mrs F's best interests.

Lighthouse said that COBS 19.1.6G is only guidance and not a rule. So our investigator was wrong to use it as a "starting point" for his assessment of the complaint. It said its adviser was only required to take reasonable steps to ensure the advice was suitable for Mrs F.

I agree with Lighthouse both that the regulator required it to ensure that its recommendation was suitable for Mrs F and also that COBS 19.1.6G is guidance and not a rule. But I don't think that the importance of this guidance should be underplayed simply because it's not a rule. It reflects the regulator's clear, unequivocal and unchanged view that keeping safeguarded pension benefits is in the best interests of most consumers. Put another way,

the FCA is clear that it's not in the best interests of the majority of consumers to give up those guaranteed benefits by transferring out of a DB scheme. I'm satisfied that this is an important guiding principle for any firm giving DB transfer 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. So advising firms should only advise customers to transfer out of a DB scheme when it's in their best interest to do so. That's the case regardless that COBS 19.1.6G is guidance rather than a rule.

So, I've considered all of the applicable regulations 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 Mrs F or that it was in her best interests. I'll explain why below.

Financial viability

Lighthouse was required by the regulator to carry out a TVAS. There are three separate TVAS reports on the file that I've seen. They contain slightly different figures. Similarly, there are several suitability reports dated in June, July and August 2018. While they all have broadly similar analysis and recommendations they show slightly different figures.

There are two suitability reports with the same date in July 2018 which have different figures but one of those has been updated with figures from the August 2018 TVAS, so it seems likely that Lighthouse just hadn't amended the date of the report when saving it to its file. I note that when she raised her complaint Mrs F referred to the suitability report as being dated in July 2018, so it seems likely Lighthouse gave her a copy of one of the July reports, even though it was most recently updated in August 2018. And as the August figures would appear to be the most up-to-date, I've quoted those below. I'll add that while it's certainly not ideal that there are altered TVAS figures on file, I don't think the differences are so large that they would have made a significant impact to Lighthouse's advice or Mrs F's understanding of that advice.

Lighthouse gave its advice after the regulator gave instructions in Final Guidance FG17/9 as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published by this Service on our website. 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.

Mrs F was 54 at the start of the advice process and turned 55 in August 2018. Lighthouse recorded that she wanted to retire at 57.

Lighthouse referred in its suitability reports to critical yields. But I found the manner in which it presented those critical yields confusing as they do not match the figures in the August 2018 TVAS. For example the TVAS indicates that the critical yield required to match the reduced pension of £26,959 together with TFC of £179,727 at age 57 was 1.09%. But when Lighthouse presented the critical yield for those benefits in its suitability report it referred to it as being "N/A". But it's provided no explanation for why. So I've only considered the TVAS figures when looking at the financial viability of the transfer.

I've noted Lighthouse said that Mrs F didn't intend to buy an annuity so the TVAS comparisons were of limited value. It said she wanted to take her 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. So, I think the critical yield was a relevant measure as it demonstrated the growth needed to provide a fund big enough to secure an equivalent guaranteed income for Mrs F. And Lighthouse told Mrs F that the

critical yields at both 65 and 57 were “realistic” and “very achievable”, which shows that the critical yield was an important feature of Lighthouse’s analysis and advice. But, as I’ve said above, that advice didn’t explain why it had given some critical yields as “N/A”. N/A generally stands for not applicable, but I think a critical yield figure would have been applicable to allow Mrs F to see the benefits she would be giving up by transferring out of the DB scheme. But Lighthouse didn’t give her that information.

The suitability report does say that Mrs F would likely be worse off if she took her benefits closer to her retirement age. But I don’t think it really points out that it might be in her best interests to consider deferring taking early retirement in order to fully reap the benefits of her DB scheme.

Instead Lighthouse focused on Mrs F’s preferred retirement age of 57. The critical yield was 1.09% if she took an annual pension of £26,959 and TFC of £179,727. However, if she took an annual pension of £34,185 and TFC of £90,249, the critical yield was 5.83%. But Lighthouse focused on the critical yield of 1.09% in the suitability report, presumably because it said Mrs F wanted to take the maximum TFC.

The relevant discount rate closest to when the advice was given which I can refer to was published by our Service for the period before 1 October 2017, and was 3.8% per year for ten full years to the scheme’s normal retirement age of 65 or 2.7% for two full years to Mrs F’s preferred retirement age of 57. I’ve kept in mind that the regulator’s projection rates had also remained unchanged since 2014: the regulator’s upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.

I’ve taken this into account, along with the composition of assets in the discount rate, Mrs F’s lowest medium attitude to risk and also the term to retirement. There would be little point in Mrs F giving up the guarantees available to her through her DB scheme only to achieve, at best, the same level of benefits outside the scheme. There was certainly a possibility that Mrs F could receive an income broadly comparable to her DB scheme benefits by transferring out of the scheme if those are compared with her taking the maximum TFC and a reduced pension at age 57. But for all the other options, including taking a full pension of £34,185 and TFC of £90,249 at age 57 the critical yield was higher than both the discount rate and the regulator’s middle projection rate. That is considerably more than the 1.09% Lighthouse focused on in its suitability report. So, if Mrs F didn’t require the maximum TFC – something I will go on to address later in my decision – I think she was likely to receive benefits of a substantially lower overall value than the DB scheme at retirement, as a result of investing in line with her attitude to risk.

As I’ve said above, Lighthouse focused on the critical yield figure of 1.09%, saying that figure was very low and achievable. I’ve noted that, when she completed a questionnaire in March 2018, Mrs F ticked a box to say that she would like the maximum TFC available. But it’s not clear whether or not, at that time, she was aware that her DB scheme automatically entitled her to a TFC lump sum alongside her full pension. But, even if she was, in order to ensure that Mrs F made a fully informed decision I think Lighthouse should have compared the options of her TFC entitlement with a full pension against a personal pension in its suitability report, and whether that lump sum, together with her other assets would’ve allowed her to meet her objective of repaying the mortgage. And, in order to allow her to make a fully informed decision, it should have made it clear that, in those circumstances, the critical yield was most likely unattainable given her attitude to risk.

Lighthouse said its cashflow models show that Mrs F could have met her income requirements by drawing it down from a personal pension. It told us that Mrs F is unlikely to deplete her personal pension entirely in her lifetime. Lighthouse recorded that Mrs F would need an income of £32,000 a year. It’s not obvious how it came to that sum. Lighthouse

hasn't completed the expenditure section of its fact-find form with any actual details. It just said that outgoings were £5,000 a month. And it appears to mirror the fact-find from Mr F's file completed some months earlier. So it seems the £32,000 was estimated based on her usual spending, less her mortgage repayments and allowing for some unscheduled expenses.

However, whatever the accurate figure, Lighthouse said that by accessing her benefits via drawdown from age 57, she could take TFC of £237,645 and an income of £39,260 a year and would last her until she was 85. That would demonstrate that Mrs F might well be able to meet her income needs by drawing down from a personal pension for her lifetime. But, whether or not she'll be able to do that will most likely be dependent on investment returns. And any returns will be reduced by Lighthouse's own fee of 0.5% of the fund value each year for ongoing advice and also by the 0.35% charged by the personal pension provider. And, if there was a market crash or as sustained period of poor investment performance, then Mrs F's fund could suffer losses which could compromise her income security in retirement. And in order to take her pension in that way Mrs F would be giving up guaranteed benefits and putting her pension funds at risk. She had no need to do that. So for this reason I don't think a transfer out of the DB scheme was in her best interests.

Lighthouse has pointed out that the regulator said in CP 17/16 that advising firms shouldn't be over-reliant on critical yields. Instead they should take a more "rounded assessment" of the suitability of a transfer based on the consumer's needs and objectives. But that doesn't mean that the critical yield isn't relevant. In fact Lighthouse argued that the critical yield, at age 57, was very achievable. But that was only the case if Mrs F took a reduced pension and maximum TFC at age 57. For all of the other options, including retiring at age 65 or if she took her full pension the critical yields were all above the regulator's middle projection rate of 5%. That indicates that those were much more challenging for an investor with Mrs F's lowest medium attitude to risk and were likely not to be met. But I don't think that Lighthouse made this clear to her. And given that I think she was likely to be worse off in retirement by transferring I don't think it was in her best interests to do so.

That said, financial viability isn't the only consideration when businesses like Lighthouse give transfer advice, and I've gone on to consider Mrs F's other objectives below.

Flexibility and income needs

Lighthouse said that by transferring out of her DB scheme Mrs F gained the ability to access her funds flexibly and to:

- Pay off her mortgage at age 57 or before – it noted the balance would be around £377,831 at age 57.*
- Retire early without "penalty" at age 57 on an income of £32,000 a year.*
- Reduce her income at age 67 when her state pension became payable.*

In her complaint Mrs F said she had no desire to pay off her mortgage early. She said her mortgage was on a fixed term rate and there was a significant penalty of around £11,000 to repay it early; so that's not something she would have wanted to do. Clearly I wasn't there when Mrs F spoke with Lighthouse's advisers so I can't know exactly what was said. But I think it's likely that Mrs F discussed the possibility of paying off her mortgage early. That's because there are numerous references to her wish to pay off her mortgage early in Lighthouse's suitability report, including the redemption figure at age 57. And I don't think those would have appeared with such frequency if Lighthouse didn't genuinely believe that this was something that Mrs F was seriously considering. So I think it was reasonable for Lighthouse to refer to this in its suitability report as being one of Mrs F's objectives.

It might be the case that paying off her mortgage early was something that Mrs F was only thinking about, rather than it being a key goal for her. And that, after factoring in the early repayment penalty was something she didn't want to do. But I don't think Lighthouse was aware of that. In her complaint Mrs F said that she had only recently read the suitability report. But transferring a pension is an extremely important decision and one that will most likely affect the individual's security in their retirement. Mrs F's CETV was over £927,000 and she was paying Lighthouse £13,650 for its advice. So, I think Lighthouse could have reasonably expected Mrs F to read the report at the time and to point out any mistakes or misunderstandings. And if she'd done that and told Lighthouse that she wasn't considering paying off her mortgage early at that time, I think it's likely that it would have amended its report to reflect that or perhaps revisited its recommendation. But as she didn't do so, I think it was reasonable for it to proceed on the basis that Mrs F was considering paying off her mortgage early.

That said, I don't think the prospect of paying off the mortgage early justified Lighthouse's recommendation to transfer. Mrs F told Lighthouse that while she had taken voluntary redundancy she anticipated continuing to work, albeit in a different capacity, until she was 57 and then retire. Mr F was also still working. And there's no evidence that she and her husband had any problems meeting their mortgage payments or would do so in the future. So it's not the case that Mrs F couldn't afford her outgoings and, at that time had no need to repay the mortgage in order to afford her other living costs. And while paying the mortgage early would free up some disposable income, by transferring out of the DB scheme Mrs F was giving up a risk free and increasing retirement income that was guaranteed for the rest of her life. But I can't see that Lighthouse explored with her why she was prepared to give up such valuable benefits in the long-term for a shorter term gain of greater disposable income.

Similarly, Lighthouse said that transferring would allow Mrs F to retire from age 57. But Mrs F could have taken early retirement at 57 while remaining in the DB scheme. That would have entitled her to a yearly pension of £34,185 together with TFC of £90,249. So, if she'd wanted to, she could have used part of that lump sum to pay off some of her mortgage. I'm also mindful that Mr F had also decided to transfer his own DB pension entitlement and intended to take the maximum TFC to help repay the mortgage – together this would have given them over £300,000. Mrs F might have also considered using some of her redundancy payment or savings to help pay off the mortgage too. Based on what I've seen, the combined sources of capital between Mr and Mrs F would've been enough to repay the mortgage in full. And by remaining in the DB scheme Mrs F would have kept her guaranteed and index linked pension entitlement that wasn't subject to investment risk or the volatilities of the markets. So, in my view, she didn't need to transfer out of the DB scheme in order to retire at age 57 or repay her mortgage.

Lighthouse said that remaining in the DB scheme wasn't suitable for Mrs F as she wouldn't be able to take her benefits without "penalty". Whereas it sold the possibility of Mrs F taking money from a personal pension at age 57 as a flexible benefit of transferring. But, the "penalty" that Lighthouse referred to was in fact nothing more than actuarial adjustments. Those adjustments reflect that, by taking a pension earlier, it's likely that the pot to pay for that pension will have to last longer. As such the actuaries calculate a reduction in the yearly pension to allow for the fact that the pensioner will claim the pension – most likely – for a longer period. That's not a penalty for taking the pension early, it's simply an adjustment for having the benefits of that pension over a longer period.

Mrs F could have chosen to take money from a personal pension from age 57 without a "penalty". But any such withdrawals from it, including a lump sum to repay her mortgage or for other spending would reduce the remaining pension pot and also decrease the amount the fund would grow by. So drawing down funds from an earlier date could in effect either

lessen: the amounts she could take as income; the time frame she would have funds available; or – as I explain below – the remaining funds available as a death benefit. As a result, taking money from her personal pension early could have a more significant effect on her income in retirement than taking benefits early from the DB scheme.

In any event I don't think Mrs F had a concrete need to take early retirement. I don't doubt that, when asked, Mrs F told Lighthouse she would prefer to retire at age 57. And I can fully understand that desire. I think most people would say when asked that they would like to retire as early as possible if given the chance. But I think that was likely more of an aspiration than a definite plan. And I believe most people would understand that having the opportunity to retire early isn't worth compromising their income security over the remainder of their life for.

In fact Mrs F has since confirmed that despite having passed her 57th birthday she is still working. And while Lighthouse couldn't have been certain of that at the time it advised her, as I've said above, for most people, early retirement means a significant drop in income. And that would reduce most individuals' spending power and lifestyle choices. So, when faced with that prospect at an early retirement age, the majority choose not to retire. Instead they opt to continue working to support their current and future lifestyle options. And that seems to be a more likely prospect for Mrs F. But there's no evidence that Lighthouse seriously challenged her desire for early retirement.

Lighthouse has also said that if Mrs F remained in the DB scheme then she couldn't have reduced her income once she started to receive her state pension at age 67. It said that could have had "adverse tax implications". If I've understood it correctly Lighthouse appears to be arguing that Mrs F should make herself worse off in order to avoid going into a higher rate tax bracket. But Mrs F would only have to pay higher rate tax on any income she received above the appropriate threshold to move into that tax bracket. So, paying more tax would simply mean she had more income to live off and enjoy. And I don't find that position "adverse" or harmful. Further, unlike with a personal pension, if Mrs F did pay higher rate tax, those additional tax sums wouldn't be reducing her DB scheme pot, as her entitlement from that was guaranteed. Conversely, if she paid higher rate tax from a personal pension then those tax payments would be directly reducing the funds available for the remainder of her retirement. So, I think the tax rate would be more of a concern from a personal pension than a DB scheme.

That said, it's true that Mrs F couldn't have had the same level of flexible access to her DB funds as she could from a personal pension. While she could have chosen to take her DB funds early, she couldn't have done so without also taking a regular income from it, nor would it allow her to reduce her income once her state pension became payable. Although, as I've indicated above, given her income would have been guaranteed, I'm not sure why she would wish to do that. So she couldn't, for example, have only taken a lump sum TFC in order to reduce her mortgage or for other needs. Whereas the personal pension would allow Mrs F to draw down funds as she saw fit. It's also the case that Mrs F could have taken 25% of her entire personal pension fund as TFC. But the DB scheme has stricter rules about how much can be taken as a lump sum. I can see why a higher lump sum, at age 57, and more choice over how much to take and when might have been an attractive prospect to her. But I'm not persuaded that Mrs F had any concrete need to take TFC at all or to vary her income throughout retirement. So I don't think the prospect of flexibility was worth giving up the guarantees of her DB scheme for.

Death benefits

Lighthouse said that a key objective for Mrs F was to be able to pass on the value of her pension to her husband or her adult children on her 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 Mrs F. That's because whatever was left within her personal pension at the date of her death would be passed on to her family. And that could be a significant sum.

In contrast the DB scheme would pay Mr F a proportion of Mrs F's yearly pension after she died. But that pension would die with him and he wouldn't then be able to pass it on to their children. I appreciate death benefits are important to consumers, and Lighthouse clearly thought that Mrs F would benefit from this by transferring her DB scheme to a personal pension. But the priority here was to advise Mrs F about what was best for her retirement provision. A pension is primarily designed to provide income in retirement – not a lump sum to family after death. But in transferring out of the DB scheme Mrs F was essentially giving up a guaranteed, index linked, increasing income in retirement, for the potential for a lump sum for her family that they may not need for many years to come. And I don't think Lighthouse explored to what extent Mrs F 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. Mrs F was married and so Mr F would have continued to receive a proportion of Mrs F's pension income if she died before him. Also, depending on her age and how long she'd been claiming the pension for, a lump sum death grant may also have been payable to Mr F. I don't think Lighthouse made the value of these benefits clear enough to Mrs F. The spouse's pension was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was.

Given the size of the CETV I can understand that Lighthouse might have thought that guaranteed a significant lump sum for Mrs F's family on her death. But, the available fund was reliant on a number of factors, including investment growth. And, as I've said above, a period of poor performance, particularly if the invested fund suffered losses, could reduce the sum available as a death benefit. Also, the fund would reduce as Mrs F drew down money from it. So if she took higher sums from it in the early years of her retirement, and enjoyed a long life, then that could significantly reduce the amounts available to leave as a legacy for her family on her death.

If Mrs F genuinely wanted to leave a legacy for her family, which didn't depend on investment returns, she could have considered life insurance. I understand that Lighthouse did discuss this with her but she thought it was too expensive. But if she didn't want to pay a significant premium then Lighthouse's starting point ought to have been to ask Mrs F how much she would ideally like to leave to her family. It could then have looked into cover for that sum to find something affordable that met her needs.

I would also point out that Mr and Mrs F had significant equity in their home, which I imagine they would leave to their children on their death.

Overall, I don't think different death benefits available through a transfer to a SIPP justified the likely decrease of retirement benefits for Mrs F. And I think Lighthouse should have made this clear to her.

DBAAT Tool

Lighthouse says that we need to consider its advice as a whole and that the output of the DBAAT tool should be an important consideration here.

I'll explain that the FCA introduced the DBAAT in 2019 to help it assess the suitability of DB transfer advice. It published the tool to assist firms to understand the regulator's file review methodology and to allow firms to understand what's expected of them.

While I'm satisfied I've already considered the suitability of the advice as a whole, taking account of Mrs F's objectives, I've also considered the DBAAT, as well as Lighthouse's and the Skilled Person's consideration of it. I note the Skilled Person thought that, for the most part, Lighthouse's advice was compliant with the appropriate regulations. But, I don't agree with all of the Skilled Person's answers to the DBAAT's questions. I've set out below where I disagree with the Skilled Person answering "no" to the following questions:

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

Mrs F had paid into her DB scheme pension for almost 30 years, and – apart from her state pension – she had no other pension entitlement. Her state pension would pay her around £8,325 a year. That sum is £23,675 a year less than the estimated income requirement of £32,000 in retirement. And as her only other income was from the DB scheme, then it's difficult to see how the Skilled Person could think she wouldn't be reliant on that income.

The Skilled Person has recorded that Mrs F would be receiving a redundancy payment which, after tax, would be worth £72,000. And, on top of the £30,000 she and her husband held in savings concluded that she had access to cash reserves of over £100,000.

But I've seen no evidence that Lighthouse discussed with Mrs F what she intended to do with her redundancy payment or if she had specific plans for it. So the Skilled Person seems to have assumed that she would hold that amount in cash and that she could use that cash as income if required. But I don't know how the Skilled Person came to that conclusion or if indeed it was the right one. Unless there's a record of a discussion somewhere that I haven't seen Lighthouse didn't have any knowledge of how Mrs F intended to use that money. So she could have intended to use the funds for something else. For example – and this is purely hypothetical – paying her mortgage. So I don't think it was reasonable for the Skilled Person to simply assume that the redundancy payment was available to Mrs F and as such she wouldn't be reliant on the DB scheme funds as an income in retirement.

Further, even if Mrs F did hold that amount in cash it's value was less than 11% of her full CETV sum. And of the £30,000 savings those were split with her husband. Also, if she took early retirement before her state pension age, then she had no other income other than the funds available from the DB scheme. So taking £32,000 a year from that cash sum would have seen it depleted in a little over three years.

I'm aware that Mr F also had a significant sum invested in a personal pension. And it's possible that his pension might have been enough to support both of them. But, that doesn't appear to have been the basis of Lighthouse's recommendation. Indeed, it expected Mrs F to withdraw significant sums from her pension to meet her living costs. Prior to taking redundancy Mr and Mrs F were living on a gross income of around £180,000 a year, with Mrs F as the principal income earner. And while they didn't anticipate requiring an equivalent salary in retirement, relying on Mr F's pension alone could see a significant drop in their living standards, particularly if his pension fund didn't perform well, suffered losses or if he took large drawdown income from it at an early stage. So, while the size of Mrs F's CETV and Mr F's likely income in retirement did give Mrs F some capacity to bear investment losses, I don't agree with the Skilled Person that she wouldn't be reliant on her DB scheme funds.

"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."

And

"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".

I've explained in detail above why transferring to maximise death benefits and obtaining flexibility was not in Mrs F's best interests. But it appears that the Skilled Person thought that Mrs F's preference for flexibility and her desire to leave any residual pension to her family on her death led to the conclusion that the advice was suitable overall. But for the reasons I've already given, I disagree. I don't think Lighthouse should have advised Mrs F to take on the significant risks of transferring out given that she could have met the majority of her objectives by remaining in the DB scheme.

So, for the reasons given above, I'm not persuaded that using the DBAAT tool demonstrates that the advice was suitable.

Summary

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

Ultimately, I don't think the advice Lighthouse gave to Mrs F was suitable. She was giving up a guaranteed, risk-free and increasing income. By transferring, Mrs F was likely to obtain lower retirement benefits and in my view, there were no other particular reasons which would justify a transfer and outweigh this. Mrs F shouldn't have been advised to transfer out of the scheme in order to repay her mortgage, especially at a time when she intended to carry on working and her repayments were affordable. And even if I were persuaded that Mrs F intended to repay her mortgage at age 57, it seems to me she would have been able to repay it in any event using the capital available to her and Mr F. Furthermore, the potential for higher death benefits wasn't worth giving up the guarantees associated with her DB scheme for.

So, I think Lighthouse should've advised Mrs F to remain in her DB scheme.

Of course, I have to consider whether Mrs F would've gone ahead anyway, against Lighthouse's advice. I accept that Lighthouse disclosed the risks of transferring to Mrs F, and provided her with a significant amount of information in the suitability report. But ultimately it advised Mrs F to transfer out, and I think she relied on that advice.

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

Further, it's apparent that learning that she's put her retirement security in jeopardy, because of Lighthouse's unsuitable advice, has been a source of distress and inconvenience for Mrs F. To address that I think it's fair and reasonable that Lighthouse pays her £400 compensation."

Developments

On 19 April 2023 Lighthouse told us that, while it didn't agree with my provisional decision, it intended to make a without prejudice offer to settle Mrs F's complaint and asked me to "hold off" issuing my final decision until it had done so. I initially set it a deadline of 25 May 2023 for Lighthouse to either make an offer to Mrs F or to respond to my provisional decision. Since then, on a number of occasions I have extended that deadline, most recently until 23 August 2023. On that date Lighthouse told us that it would not be making an offer, so I've gone on to 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.

As Lighthouse has not been in a position to make Mrs F an offer to settle her complaint. And as neither party has provided any substantive reasons to challenge my provisional decision, I see no reason to change it. I still think Mrs F's complaint should be upheld for the reasons above.

Putting things right

A fair and reasonable outcome would be for Lighthouse to put Mrs F, as far as possible, into the position she would now be in but for Lighthouse's unsuitable advice. I consider Mrs F would have most likely remained in her DB scheme 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 the FCA's 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>.

For clarity, while Mrs F told Lighthouse she planned to retire at age 57, as I understand it, she hasn't yet retired and has no plans to do so at present. So, compensation should be based on her normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

This calculation should be carried out as at the date of my final decision and 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 F'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:

- always calculate and offer Mrs F redress as a cash lump sum payment,
- explain to Mrs F before starting the redress calculation that:
 - her 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 her personal pension
- offer to calculate how much of any redress Mrs F receives could be augmented rather than receiving it all as a cash lump sum,
- if Mrs F accepts Lighthouse's offer to calculate how much of her redress could be

augmented, request the necessary information and not charge Mrs F for the calculation, even if she 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 Mrs F's end of year tax position.

Redress paid to Mrs F 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 Mrs F's likely income tax rate in retirement – presumed to be 40%. So making a notional deduction of 30% overall from the loss adequately reflects this.

Lighthouse should also pay Mrs F £400 to address her distress and inconvenience resulting from its unsuitable advice.

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 Mrs F 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 also recommend that Lighthouse Advisory Services Limited pays Mrs F the balance.

If Mrs F 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 F can accept my decision and go to court to ask for the balance. Mrs F 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 F to accept or reject my decision before 22 September 2023.

Joe Scott
Ombudsman