DRN-4386359

The complaint

Mr D complains about the suitability of the advice provided by Lighthouse Advisory Services Limited ("Lighthouse") in November 2017 to transfer the value of his safeguarded benefits in the British Steel Pension Scheme ("BSPS") to a personal pension plan ("PPP").

Both Mr D and Lighthouse are represented in this complaint by different law firms who have submitted substantial comments and evidence in support of their clients' positions – to make my findings easier to follow, I'll refer to the comments and evidence received as being those of Mr D and Lighthouse.

What happened

I issued my provisional decision on this complaint on 14 September 2023 in which I set out the background and my provisional findings. I've repeated what I said here:

"In March 2016, Mr D's employer, Tata Steel UK Ltd ("Tata Steel"), announced that it would be examining options to restructure its business including decoupling the BSPS from the company. The BSPS was a defined benefits ("DB") pension scheme that provided a guaranteed lifetime income to members. The consultation with members referred to possible outcomes regarding their safeguarded benefits, one of which was a transfer to the Pension Protection Fund ("PPF") – the PPF is a statutory fund designed to provide compensation to members of DB pension schemes when their employer becomes insolvent. Tata Steel closed the BSPS to further benefit accrual from 31 March 2017.

In May 2017, the PPF announced that the terms of a Regulated Apportionment Arrangement ("RAA") had been agreed – this was approved by The Pensions Regulator in August 2017. Under the announced plans, Tata Steel agreed to set up and sponsor a new DB pension scheme, the BSPS2, subject to certain conditions relating to funding and size being satisfied.

In October 2017, these changes were communicated to BSPS members, including Mr D, under the 'Time to Choose' communication exercise. This explained that BSPS members had three options regarding their safeguarded benefits:

1. *Transfer to the PPF;*
2. *Transfer to the BSPS2; or*
3. *Transfer to an alternative pension plan such as a PPP.*

Options 1 and 2 would've enabled Mr D to retain guaranteed pension income, albeit at a lower level than provided by the BSPS.

Members that didn't choose an option remained in the BSPS and were ultimately transferred to the PPF. The details of Mr D's safeguarded benefits in the BSPS at that time were as follows:

- *He had accrued 33 years and 8 months' qualifying service between September 1982 and May 2016;*

- *The scheme pension provided was based on his final salary, qualifying service and benefit accrual rate – as at the date of leaving the scheme his annual scheme pension was £16,494. The scheme pension would be revalued by a prescribed amount over the term to the scheme normal retirement age of 65 and, once in payment, would also escalate annually by a prescribed amount;*

- *Payment of benefits before age 65 would be subject to an early retirement reduction on a sliding scale – in simple terms, the earlier benefits were taken, the greater the reduction applied to the scheme pension. Broadly, this meant a 30% reduction would apply to the scheme pension if benefits were taken at age 55 and a 18% reduction at age 60; and*

- *The cash equivalent transfer value of his safeguarded benefits was £420,105.72.*

In response to the announcement by Tata Steel, Mr D contacted Lighthouse for advice. He met one of its advisers in October 2017. A fact find document and attitude to risk questionnaire were completed which recorded the following information about Mr D:

- *He was aged 51 and his wife, Mrs D, was aged 49. They were both in good health. They didn't have any children or financial dependents;*

- *He was employed full-time by Tata Steel and paid gross annual income of about £32,000. Mrs D was employed by the local council and paid gross annual income of about £19,000;*

- *Their assets comprised the marital home valued at £180,000 and cash savings of about £22,000. Mrs D also had an endowment policy valued at about £13,700;*

- *They didn't have any debt or liabilities;*

- *After paying for bills and essentials, he had surplus disposable income of about £360 available every month;*

- *In addition to the value of his safeguarded benefits in the BSPS, he was on course to receive the full State pension at age 67 and had been a member of Tata Steel's defined contribution ("DC") pension scheme since June 2016. The total annual contribution into his DC plan was 12% of his gross annual salary. His DC plan was then valued at about £4,600. He also had a Free Standing Additional Voluntary Contribution ("FSAVC") plan valued at about £30,000 into which he was contributing £60 every month;*

- *Mrs D was an active member of the Local Government Pension Scheme ("LGPS") and expected the draw those benefits from age 67. She had also accrued benefits in a former employer's DB pension scheme and expected to draw those benefits from age 60; and*

- *He had previously invested in unit trusts and endowment policies but, overall, his investment knowledge and experience was limited. His risk profile was determined to be 4 on a scale of 1 to 10 where 1 was lowest risk and 10 was highest risk. The score of 4 was described as 'Lowest medium'. This was defined as, "While you are likely to be concerned with not getting as much back from your investments as you put in, you may also want to make higher returns on your investments. Your preferred investments are likely to be mainly lower- or medium-risk investments such* *as cash, bonds or property, with typically fewer higher-risk investments such as shares".*

Following the fact find meeting, Lighthouse's adviser issued his suitability report to Mr D in November 2017 recommending that he transfer the value of his safeguarded benefits in the BSPS to a PPP provided by Prudential. The suitability report confirmed Mr D's needs, goals and objectives related to his safeguarded benefits in the BSPS, as follows:

1. *Early retirement around 55, realistically without any reductions.*

2. *Did not wish to work until 67 your view would always be potentially earlier retirement to enjoy life whilst you have your health.*

3. *You want the full value of your pension to be passed to your wife which would not happen currently.*

4. *Looking for as much flexibility with your pension in terms of how much tax efficiently you take and when you take it.*

5. *Ability to grow and defer taking your tax-free cash as you did not wish to take in one go.*

6. *Having assessed your income requirements, you told me you require £19,668 net, per annum, in retirement from age 55. Your projected outgoings are £1,693 per month. [this income requirement was a joint one for both Mr and Mrs D]*

7. *You have reservations over the future of the BSPS due to the well publicised under funding and would therefore like your scheme transferred out. There have been well publicised funding problems with the scheme and is going to enter Pension Protection Fund (PPF). You do have the option to avoid this by joining the BSPS 2 but this is on a reduced benefit basis which we will discuss through this report. You did not wish to remain in the current format and fall in to the PPF as it totally restricts your options further down the line i.e on potential transfers if you felt the need to do this. You sought advice on this basis to consider your full options based on the above objectives.*

8. *You understand market related investment and the fact that values will fall as well as rise, but you have no reservation and fully understand the risks you are taking."*

To align with Mr D's 'Lowest medium' risk profile, Lighthouse's adviser recommended that the transfer value of £420,105.72 be invested in the 'PruFund Growth Fund'. The costs associated with the recommendation were set out in the suitability report, as follows:

<u>Initial advice charge</u>

- *3% (or £12,603.15) – initial adviser charge for recommendation and implementation*

<u>Ongoing annual charges deducted from the PPP fund value</u>

- *0.50% ongoing adviser charge*
- *0.65% investment annual management charge*
- *0.35% product fee*

Mr D accepted the recommendation, following which the transfer to the PPP was completed. In March 2022, when he was aged 55 (but age 56 within the next two weeks), Mr D accessed benefits from his PPP.

<u>This complaint</u>

During 2022, Mr D complained to Lighthouse about the suitability of its pension transfer advice in 2017. In summary, he believed that the advice wasn't in his best interests and had caused him to suffer a financial loss resulting in him being worse off in retirement.

Lighthouse didn't uphold this complaint. In summary, it was satisfied that it had considered and adhered to the relevant FCA rules and guidance including providing Mr D with all the necessary information and risk warnings in good time to be able to make an informed decision. It believed that a transfer to a PPP was the only viable option available at that time to meet Mr D's objectives and that it's advice was therefore suitable.

One of our investigators considered this complaint and recommended that it be upheld because, in her view, Lighthouse had failed to demonstrate that transferring to the PPP was clearly in Mr D's best interests. She thought that the pension transfer to the PPP was an unsuitable outcome for Mr D. Given his circumstances and objectives, she thought he should've been advised to transfer to the PPF on the basis of prospective early retirement at age 55. To put things right, our investigator recommended that Lighthouse carry out a redress calculation in line with the FCA's guidelines on the basis that Mr D transferred to the PPF, took benefits at age 55 and would be a 20% income taxpayer in retirement. In addition, she recommended that Lighthouse pay Mr D £300 compensation for the trouble and upset caused by its unsuitable recommendation.

Mr D agreed that this complaint should be upheld but thought his financial loss should be calculated on a different basis. He said redress should be calculated from age 58 rather than age 55 because he would've used his DC pension savings in the first instance. And that the notional reduction for income tax shouldn't apply to the part applicable to adviser and product charges.

Lighthouse disagreed with our investigator's assessment and provided additional comments in response. It stated that when assessing the suitability of the advice given to Mr D, this Service had applied an outdated, narrow approach and had failed to pay due regard to the FCA's rules and Defined Benefit Advice Assessment Tool ("DBAAT"). It stated that the pension transfer advice provided to Mr D had previously been assessed as suitable by an FCA-appointed 'Skilled Person' and so it questioned how this Service had reached a different conclusion.

Our investigator considered those additional comments but wasn't persuaded to change her view and recommendation that this complaint should be upheld. Since agreement couldn't be reached, this complaint has been referred to me to review.

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.

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. 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.

I'd like to clarify that the purpose of this final decision isn't to repeat or address every single point raised by the parties. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. I'm satisfied that I've been provided with sufficient evidence to decide this complaint.

To make my findings easier to follow, I've set them out under separate headings below.

<u>The FCA's applicable rules and guidance</u>

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 19 which specifically relate to a DB pension transfer were as follows:

COBS 19.1.2R required the following:

> *"A firm must:*
>
> *(1) compare the benefits likely (on reasonable assumptions) to be paid under a defined benefits pension scheme or other pension scheme with safeguarded benefits with the benefits afforded by a personal pension scheme, stakeholder pension scheme or other pension scheme with flexible benefits, before it advises a retail client to transfer out of a defined benefits pension scheme or other pension scheme with safeguarded benefits;*
>
> *(2) ensure that that comparison includes enough information for the client to be able to make an informed decision;*
>
> *(3) give the client a copy of the comparison, drawing the client's attention to the factors that do and do not support the firm's advice, in good time, and in any case no later than when the key features document is provided; and*
>
> *(4) take reasonable steps to ensure that the client understands the firm's comparison and its advice."*

And COBS 19.1.3 G stated:

> *"In particular, the comparison should:*
>
> *(1) take into account all of the retail client's relevant circumstances;*
>
> *(2) have regard to the benefits and options available under the ceding scheme and the effect of replacing them with the benefits and options under the proposed scheme;*

(3) explain the assumptions on which it is based and the rates of return that would have to be achieved to replicate the benefits being given up;

(4) be illustrated on rates of return which take into account the likely expected returns of the assets in which the retail client's funds will be invested; and

(5) where an immediate crystallisation of benefits is sought by the retail client prior to the ceding scheme's normal retirement age, compare the benefits available from crystallisation at normal retirement age under that scheme."

Under the heading "Suitability", the following was set out:

COBS 19.1.6G:

"When advising a retail client who is, or is eligible to be, a member of a defined benefits occupational pension scheme or other scheme with safeguarded benefits whether to transfer, convert or opt-out, a firm should start by assuming that a transfer, conversion or opt-out will not be suitable. A firm should only then consider a transfer, conversion or opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer, conversion or opt-out is in the client's best interests"

COBS 19.1.7G:

"When a firm advises a retail client on a pension transfer, pension conversion or pension opt-out, it should consider the client's attitude to risk including, where relevant, in relation to the rate of investment growth that would have to be achieved to replicate the benefits being given up."

COBS 19.1.7B:

"In considering whether to make a personal recommendation, a firm should not regard a rate of return which may replicate the benefits being given up from the defined benefits pension scheme or other scheme with safeguarded benefits as sufficient in itself.

COBS 19.1.8G:

"When a firm prepares a suitability report it should include:

(1) a summary of the advantages and disadvantages of its personal recommendation;

(2) an analysis of the financial implications (if the recommendation is to opt-out); and

(3) a summary of any other material information."

Businesses are required to follow these rules and consider the guidance because the FCA considers safeguarded benefits to be valuable. Based on the above regulatory rules and guidance, businesses advising on pension transfers should start by assuming that the existing DB pension scheme is suitable and to only recommend a transfer, which converts safeguarded benefits into flexible benefits, if it can clearly demonstrate it's in their client's best interests.

In assessing the suitability of Lighthouse's advice to Mr D, it's necessary for me to have due regard to the FCA's rules and guidance stated above.

Mr D's situation

The situation for Mr D wasn't normal because the existing DB pension scheme, the BSPS, was closing. So he was essentially forced to transfer the value of his safeguarded benefits to a new scheme. He had three options, as set out in the 'Time to Choose' pack issued to him in October 2017:

1. *Transfer to the PPF;*
2. *Transfer to the BSPS2; or*
3. *Transfer to an alternative pension plan such as a PPP.*

It's undeniable that it was a period of great uncertainty for individuals such as Mr D. Many of these individuals were in a vulnerable position due to the uncertainty surrounding the future of the BSPS. I think the uncertainty only served to emphasise the need at that time for a balanced assessment of the options available and ultimately the provision of suitable advice. It's my view that any concerns Mr D had about the security of his safeguarded benefits should've been addressed and appropriately managed by the professional party in the transaction, Lighthouse.

Options 1 and 2 would've enabled Mr D to retain guaranteed income, albeit at a lower level than provided by the BSPS. There were differences between the PPF and the BSPS2. For deferred members below the scheme normal retirement age, like Mr D, the PPF would provide compensation based on 90% of their accrued pension at the scheme normal retirement age (in effect a 10% reduction in benefits). The BSPS2 didn't apply such a reduction. The BSPS2 also provided the potential for discretionary increases to the accrued pension, a higher level of spouse's pension and the option to transfer to an alternative pension to convert to flexible benefits at a later date, if then deemed suitable.

So while the situation was somewhat unusual, Mr D still had the option to retain guaranteed income in either the PPF or BSPS2. Based on his age, circumstances and objective to retire earlier than age 65, it's my view that Mr D would've been better off choosing the PPF instead of the BSPS2 because of the higher level of income and tax-free cash it would pay on early retirement.

I don't believe that the circumstances surrounding the BSPS altered the FCA's position or its expectations of firms. Given the FCA's view on safeguarded benefits and what was known at that time, it's my fair and reasonable opinion that Lighthouse should've started its advice process by assuming the PPF was likely to be the most suitable option for Mr D and to only recommend a transfer to the PPP if it could clearly demonstrate it was in his best interests, as referenced in COBS 19.1.6G.

Transfer analysis

One of the key components in determining the suitability of a pension transfer is assessing the financial viability of the proposed transaction.

The transfer value analysis system ("TVAS") rules applied at the time Lighthouse advised Mr D. This required it to carry out a transfer value analysis to calculate the 'critical yield' applicable to the proposed transfer. The critical yield is the annual rate of investment return required on the invested transfer value, after charges, to match the capitalised value of the benefits offered by the DB pension scheme on the assumption that the value of the alternative pension is used to secure a lifetime annuity at the scheme normal retirement age *(or other selected age) – the higher the critical yield, the less likely that the alternative pension will achieve sufficient investment growth to match the revalued pension payable by the DB pension scheme.*

Lighthouse calculated the following estimated benefits and critical yield figures for the BSPS and PPF:

Scheme	***At age 65 based on Mr D taking a full pension only***	***At age 65 based on Mr D taking a reduced pension and maximum tax-free cash***	***At age 55 based on Mr D taking a full pension only***	***At age 55 based on Mr D taking a reduced pension and maximum tax-free cash***
BSPS	*£23,615 per year* *Critical yield 8.47%*		*£12,712 per year* *Critical yield 23.34%*	
BSPS		*£15,651 per year plus £104,340 lump sum* *Critical yield 6.30%*		*£8,990 per year plus £59,933 lump sum* *Critical yield 14.78%*
PPF	*£19,745 per year* *Critical yield 4.62%*		*£13,266 per year* *Critical yield 10.97%*	
PPF		*£15,448 per year plus £102,607 lump sum* *Critical yield 4.22%*		*£11,025 per year plus £73,232 lump sum* *Critical yield 9.86%*

In the suitability report, Lighthouse's adviser expressed his view on the critical yield figures for the BSPS as follows:

> *"The yields at 65 in my opinion are achievable given the past performance of the fund although at 55 they are higher and unlikely to be met, this is due to the fact you are close to the retirement date and have less time to potentially accumulate the required capitalised value to purchase an annuity. Having said this, as you have other guaranteed scheme payable via [Mrs D] and the state, taking the annuity option isn't something you'd pursue at this moment in time. You have stated that you would prefer to utilise the tax free cash had you stayed in the scheme and as such I have paid reference to those yields specifically."*

Lighthouse's recommendation to Mr D was provided to him after the FCA gave instructions in its 'Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers' 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 on our website. While businesses weren't required to refer to these rates when giving advice on pension transfers, I consider they provide a useful indication of what growth rates would've been considered reasonably achievable when the advice was given in this case.

The discount rates we refer to are based on a typical investment spread across shares and bonds. Over the last thirty years, the bond component in the discount rates has increased to reflect the more cautious approach typically taken when members transfer a large number of years' of DB qualifying service. The closest discount rate which I'm able to refer to and published by this Service for the period before October 2017 is 4.1% based on Mr D taking benefits at the scheme normal retirement age of 65 and 2.8% based on him taking benefits early at age 55. Therefore, the growth rate which would've been considered reasonably achievable was somewhere between 2.8% to 4.1% depending at which point Mr D took benefits between age 55 and 65. For additional context, the FCA's projection rate for *pensions at the time was 8% per year for the upper rate, 5% per year for the middle rate and 2% per year for the lower rate.*

Lighthouse assessed Mr D's risk prolife as 'Lowest medium' and recommended that the value of his PPP be invested in the 'PruFund Growth Fund' to align with this. I've taken this into account, along with the composition of assets in the discount rate, Mr D's risk profile and the investment timeframe to age 55. Based on these factors, I think the critical yield figures meant that there was limited scope to match the benefits likely payable by the PPF, let alone exceed them. There would usually be no point relinquishing safeguarded benefits in order to 'stand still', given the risk that the transfer might underperform. It's my view that the critical yield figures above show that there was a strong possibility Mr D would be worse off by transferring to the PPP compared to the PPF, especially if he took benefits earlier than age 65 as was his objective.

Of course, financial viability isn't the only consideration when giving pension transfer advice, as was set out in COBS 19.1.7B. A reasonable prospect of the critical yield being met or exceeded wouldn't necessarily mean that the transfer was suitable, and, conversely, there might be other considerations which mean a pension transfer is suitable, despite providing overall lower benefits. I'll now go on to consider this in the context of Mr D's recorded objectives.

<u>Mr D's objectives</u>

Based on the fact find document and suitability report, Mr D had several objectives regarding his safeguarded benefits, which I think can be distilled into three broad areas, summarised as follows:

- ***Control:** He was concerned about the longevity of Tata Steel and that the value of his safeguarded benefits could be transferred to the PPF, leading to a lack of flexibility and reduction in the level of benefits he would receive when he retired. Due to these concerns, he wanted control over his pension benefits by transferring away to a private arrangement such as a PPP;*

- ***Flexibility and early retirement:** He wanted the flexibility to retire early around age 55 and, at that point, be able to draw annual income of about £19,668 net. This income requirement was a joint one for both Mr and Mrs D; and*

- ***Death benefits:** He wanted to ensure that, in the event of his earlier death, any unused pension benefits be passed on to Mrs D.*

I recognise that Mr D's safeguarded benefits was ultimately his money to do with as he saw fit. However, he was relying on Lighthouse to provide expert, balanced information and advice, taking into account all the information available to it at that time – so that he could then make an informed decision. I understand that there will be instances where a client seeks financial advice with preconceived notions or concerns about the financial health of an employer or DB pension scheme but, as the professional party, Lighthouse was tasked with rationally addressing those concerns and providing an appropriately balanced view of the available options.

In my view, financial planning isn't simply about wish fulfilment and facilitating whatever course of action a client wishes to take. If an advising business considers a course of action to be unsuitable for their client, or otherwise not in their best interests, it has a choice not to facilitate the transaction.

In assessing the suitability of Lighthouse's recommendation, I've considered each of Mr D's objectives under separate headings below.

<u>Control objective</u>

It's clear that one of Mr D's main motivations for considering a pension transfer was due to his concerns about the BSPS and the risk it might fall into the PPF. In its suitability report Lighthouse referenced Mr D's concerns about the BSPS as follows:

> *"You advised me that you would like to be more in control of your own pension fund as you are concerned you will lose benefits if you stay in the scheme. There have been funding problems with the scheme and is going to enter Pension Protection Fund (PPF). You do have the option to avoid this by joining the BSPS 2 but this is on a reduced benefit basis which we will discuss through this report. You did not wish to remain in the current format and fall in to the PPF as it totally restricts your options further down the line i.e on potential transfers if you felt the need to do this. Aside from the PPF issues, you are also aware there are reductions planned to the benefits too should you remain. You would prefer to be covered by FSCS rules which ensures that you get the full value of the pension back with no upper limit which was covered by [Lighthouse's adviser] at your meeting and also documented within our client agreement which you have reviewed and signed."*

I accept that such concerns were common among steelworkers at the time, and that it would've been a major motivation behind many of them transferring out. So I can understand why Mr D wanted to have control over his benefits by transferring to a PPP.

However, I don't consider a transfer to the PPF was an outcome for Mr D to avoid at all costs. I'll explain why. Mr D's safeguarded benefits, accounting for 33 years and 8 months' qualifying service, represented the backbone of his retirement provision built up by that time. While it's true Mr D had two DC pensions (FSAVC plan and Tata Steel DC plan) and some cash savings, I think it's fair to say that when the time came to retire, likely around age 55 (which I'll come to later), that he'd be heavily reliant on the value of his safeguarded benefits to provide a minimum level of core retirement income to support his standard of living in retirement – and so it was important to protect this source of guaranteed income. Given the likely need for guaranteed income I don't think the lack of a transfer option under the PPF was particularly relevant for Mr D.

The PPF was introduced by the government in 2005 as a 'lifeboat' scheme to protect members of DB pension schemes with the promise of providing a minimum level of benefits. The revaluation and escalation rates are set by law. Depending on his age on transfer to the PPF, Mr D could expect to receive a minimum of 90% of his scheme pension, although this would be affected by the revaluation and escalation rates under the PPF. This contrasted with the recommended PPP where there's no promise of a minimum level of benefits payable. At the time of Lighthouse's recommendation, the PPF's financial position remained robust. So there wasn't any reason at that time to question the financial viability of the PPF to provide benefits in the future.

If Mr D was concerned about his safeguarded benefits being transferred to the PPF which would result in him losing 10% of his scheme pension, then I question why, as a 'Lowest medium' risk investor, he would accept the risk of transferring to a PPP which exposed him to unlimited downside risks where the loss could be significantly greater than 10%. This simply doesn't make sense to me and suggests that he didn't have the knowledge and experience to understand the features, risks and benefits of the PPF compared to the *pension transfer. Since the PPF provided secure income, I don't think a transfer to it was a poor outcome for Mr D, as suggested by Lighthouse.*

In summary, I think that Lighthouse failed to adequately allay Mr D's misapprehensions and that he therefore made the decision to transfer to the PPP from an uninformed position regarding the security of his benefits under the PPF option.

<u>Flexibility and early retirement objective</u>

Lighthouse recorded that Mr D wanted the flexibility to retire early around age 55 without any reductions and to receive annual income of about £19,668 after tax. This income requirement was a joint one for both Mr and Mrs D.

Lighthouse stated that if benefits were taken early under the BSPS then the income paid to Mr D would be reduced. It characterised this reduction as a penalty. But the reduction wasn't a penalty but applied to reflect the fact that the scheme would have to support the income for longer than anticipated, and to protect the interests of scheme members generally. Lighthouse also portrayed the PPP option as allowing for early retirement earlier than age 65 without penalty. I think this was misleading. The reality was of course that the PPP would've had less time to grow if accessed earlier than age 65 and any resulting income would need to last longer. I cannot see that this was adequately explained to Mr D so that he could understand accessing any of the available options early would likely lead to reduced retirement income during his lifetime compared to taking benefits at age 65.

Flexibility and control might sound attractive, but I can't see that Mr D had any concrete need for it. The suitability report, for example, stated that the PPP would give Mr D "increased levels of flexibility" instead of a fixed income but didn't explain why this was so important. And it wasn't explained why he didn't want a fixed or guaranteed retirement income stream. In my view, there's no real evidence that Mr D required irregular lump sums, variable income or staggered income during retirement. Rather, I think that based on his lack of investment experience, risk profile and the fact that the value his safeguarded benefits represented the backbone of his retirement provision, Mr D likely needed a source of guaranteed income to support his standard of living in retirement. Given the critical yields applicable in this case, I'm not convinced it was suitable for Mr D to expose the backbone of his pension provision to substantial investment risk.

The PPF would've provided guaranteed income from age 55 onwards. Lighthouse calculated in the TVAS report that at age 55 the PPF was estimated to provide either annual income of £13,266 or reduced income of £11,025 plus a lump sum of £73,232. But this wasn't stated in the suitability report. So it's unclear to me how Mr D could make an informed decision regarding the benefits available under the alternative option of the PPF.

The suitability report focused on the benefits payable from the recommended PPP. All that was presented for comparative purposes was the estimated benefits that would be provided by the BSPS – but the figures presented were misleading. On Page 11 of the suitability report it stated that at age 60 the BSPS was estimated to provide either annual income of £12,712 or reduced income of £8,990 plus a lump sum of £59,933. It then went on to state, "Should you retire early at age 55 you will be subject to an 30% reduction in total". I have two concerns here. Firstly, the figures of £12,712 or reduced income of £8,990 plus a lump sum of £59,933 were as at age 55, as confirmed in the TVAS report, and not at age 60. Secondly, Mr D may have interpreted the reference to the 30% reduction as applying to the presented figures and so may have thought the estimated benefits at age 55 would be lower than was actually the case. This is because the figures presented in the suitability report already took into account the reduction.

Overall, I'm not satisfied that the suitability report adequately set out the income available from the PPF option to enable Mr D to make an informed decision.

Could the income need have been met by the PPF?

The basis of Lighthouse's advice, as set out in the suitability report, was that the annual income need of about £19,668 after tax was a joint one for both Mr and Mrs D which would be met by the income generated by both their pension arrangements. Since Lighthouse relied on the value of Mrs D's pension income to support its recommendation to Mr D, I think it's fair that I also take it into account.

As noted above, at age 55 the PPF was estimated to provide either annual income of £13,266 or reduced income of £11,025 plus a lump sum of £73,232. And at age 65 it was estimated to provide either annual income of £19,745 or reduced income of £15,448 plus a lump sum of £102,607. If benefits were taken between age 55 and 65 then the estimated benefits would fall somewhere between these estimate figures. Lighthouse would've been aware of this.

By the time of the advice in 2017, Mr D had built up DC pension savings of about £35,000 in his workplace DC pension scheme and FSAVC plan. He was continuing to pay contributions into both plans. Based on the contribution rates and that it was expected Mr D would remain employed by Tata Steel until retirement, I think it's fair to say that by age 55 the value of his DC pension savings would be about £50,000 which would increase the longer Mr D delayed his retirement.

In addition, Mrs D was an active member of the LGPS and expected the draw those benefits from age 67. According to the suitability report, the projected income from the LGPS at age 67 was £9,835. She had also accrued benefits in a former employer's DB pension scheme and expected to draw those benefits from age 60. The projected annual income from that scheme at age 60 was £8,361.

Suitably advised I think Mr D could've used his DC pension savings to meet the recorded annual income need for the first couple of years of retirement from the point he first accessed benefits. This course of action would've enabled him to delay taking the PPF income so as to minimise the level of early retirement reduction applied to that income. I note that in March 2022, when he was aged 55 (but age 56 within the next two weeks), Mr D accessed benefits from his PPP. So it seems to me that his DC pension savings could've met his recorded income need for the two-year period to age 58. And then, from that age, he could've taken the reduced pension and tax-free lump sum option from the PPF. Based on the estimated benefits payable by the PPF from age 55, I think a combination of the reduced pension and tax-free cash from age 58 (which would be higher than compared to the figures at age 55) would've likely met the income need for the four-year period to age 62. Mrs D is two years younger than Mr D, so by the time he was age 62, she was projected to receive from her 60th birthday annual income of £8,361 from one of her DB pension schemes.

It's my view that the combined income provided by the PPF (from Mr D's 58th birthday) and Mrs D's DB pension scheme (from her 60th birthday) – supplemented by any tax-free cash provided by those schemes – would've likely met their joint income need until they started drawing their State pensions and Mrs D's LGPS pension started from age 67. If receipt of their guaranteed pension income generated surplus income, this could've been reinvested for future use. In my view, the prospect that the PPF may have generated excess income from age 67 onwards wasn't sufficient reason for Mr D to forego that option in favour of a transfer to a PPP.

Mr D had enjoyed a guaranteed income all his working life and was recorded as having a 'Lowest medium' risk profile. I don't think we would've been prepared to take too much risk with his retirement provision. So I think a guaranteed income would've been valuable bearing in mind he had flexible options through tax free cash and his DC pension savings without taking risk on his main pension provision.

The alternative, blended approach I've suggested above likely would've enabled Mr and Mrs D to achieve their joint income need but with significantly less risk. I haven't seen any evidence that Lighthouse adequately considered, presented and discounted this alternative blended approach in meeting his objectives.

It's my view that transferring to the PPP led to the investment, inflation and longevity risks associated with providing the retirement benefits moving from the DB pension scheme to Mr D for no clearly defined advantage compared to the alternative option of transferring to the PPF.

Death benefits objective

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. However, while death benefits might be important for members such as Mr D, there generally shouldn't be a disproportionate emphasis on this compared to their own retirement needs.

Lighthouse recorded that, in the event of his earlier death, Mr D wanted any unused pension benefits to be passed on to Mrs D. The suitability report stated, "Your employer provides Death in Service benefit and a 6 month full pay, 6 month half pay sickness scheme. You appreciate this benefit short term is good but the problem you face is the stay and enter the PPF which limits your options, or move to the BSPS 2 scheme on reduced benefits. With both the restriction in mind on offer plus the last option of transfer giving extended benefits not only now, which is a priority but also long term into your retirement (when death in service would be lost), you felt delaying any transfer may limit your options in the future and the transfer gave you what you were looking for on several accounts after several discussions with [Lighthouse's adviser].

I think it's important not to underestimate the existing benefits Mr D already had in place. Through his employment, he had death in service life cover based on a multiple of four times' his salary, meaning a lump sum of about £128,000 would be paid in the event he died while still employed by Tata Steel – this was payable regardless of whether his safeguarded benefits were transferred to the BSPS2, PPF or a PPP. The value of Mr D's FSAVC and Tata Steel DC plans, then both valued in total at about £35,000, would also be payable to Mrs D, the value of which would increase over time since he was continuing to pay contributions. In addition, the PPF would've paid Mrs D a guaranteed spouse's pension based on 50% of his revalued pension which escalated annually.

The recommended PPP offered flexible death benefits. Based on the applicable tax rules, if death occurred under age 75 the benefits are paid free of income tax – after age 75 the benefits are taxed at the beneficiary's marginal rate of income tax. It's fair to say that immediately following the transfer to the PPP and for the period until Mr D withdrew retirement benefits, the death benefits available would be significant (subject to investment performance) due to the simple fact he couldn't access and deplete the fund value until at least age 55. But Mr D was recorded as being in good health. So he could expect life expectancy into his 80s. There weren't any immediate health concerns that indicated a pension transfer was a suitable course of action at that time. Withdrawing money from the PPP to meet his income and lump sum needs from age 55 onwards would likely mean that the size of the fund remaining in later years – when death is more likely – could be much *smaller than expected.*

If Mr D wanted to provide a lump sum to Mrs D on his death, then life cover could've achieved the same objective of providing a lump sum while enabling him to maintain guaranteed income in the PPF. I note that Mr D had disposable income available every month after paying his bills which he could've used to pay for life cover to achieve the death lump sum objective. In the suitability report reference was made to the possibility of obtaining life cover, as follows:

> *"Before proceeding with this transfer, as death benefits were important to you, I considered a whole of life plan to give you the equivalent benefit that the scheme transfer value is giving based on the fact that you wanted this to pass back to your family upon your death and not the proportional benefit. Bearing in mind, your pension will be invested potentially for the rest of your life and it is unlikely you will annuitise, I did not deem term assurance relevant as this assumes you need death cover to a certain date and then it will cease.*
>
> *Your objective is to have a death benefit for your wife for the rest of your life and pass the fund on in full to her. With this in mind, I sourced a whole of life plan for £420,105.72 (your DB pension) linked to inflation assuming this is what your transferring pension would grow at. Using whole of market software 'assureweb' to research this, I have established that the monthly payment on a guaranteed basis (meaning it will not be open to future change based on underwriting statistics) to give you a benefit the same as the scheme would be £383.86 per month. We discussed this and felt this was too expensive to pay in addition to the fact it still mean that the scheme would retain a proportion of your benefits upon your death which is against your objectives. This assumes you would qualify for the cover via the cheapest provider and the real cost of another plan with the next level of insurers is much higher than this cost."*

I cannot see evidence that Lighthouse adequately quantified Mr D's death lump sum need taking into account any existing cover, over what term or how this might change over time. Rather, it appears Lighthouse assumed Mr D required life cover that matched the transfer value. That level of cover may have been inappropriate. Furthermore, it appears Lighthouse assumed that Mr D required cover for the rest of his life. Again, this may have not been necessary. Using a whole of life policy may have led to Mr D being charged for benefits or longer-term life cover that he might not have needed, making the cover unnecessarily expensive.

In my view, a level or decreasing term assurance may have been more appropriate for comparative purposes. Pure life cover for a defined term is generally cheaper than whole of life cover, so the cost was likely to be less than the quoted monthly figure of £383.86 for the whole of life plan and may have been more attractive to Mr D. I cannot see evidence that Lighthouse considered and presented level or decreasing term life cover quotes to Mr D to help him make an informed decision, regardless of his own views about the relevance of life cover.

Notwithstanding the above, I think it's important to note that Mrs D had accrued substantial benefits in two DB pension schemes in her own right. So she wasn't entirely reliant on the value of Mr D's safeguarded benefits to provide income to support her standard of living in retirement in the event of his earlier death, further undermining the case for a pension transfer to provide death benefits to Mrs D.

While I understand that death benefits are important to consumers, the priority here, in my opinion, was to advise Mr D about what was best for his own retirement provision. A pension *is primarily designed to provide income in retirement. It's my view that Mr D had no health issues at the time Lighthouse advised him which might reasonably have prompted him to relinquish the guarantees attached to his own retirement income for the sake of an enhanced safety net for Mrs D. So I'm not convinced there was any real merit in him transferring to a PPP at that time to provide a lump sum death benefit.*

<u>Skilled Person review</u>

The FCA previously required Lighthouse to appoint a 'Skilled Person' to conduct a review of certain DB pension transfers that were advised on or arranged by Lighthouse. As part of that review exercise, the advice given to Mr D was assessed as suitable by the 'Skilled Person' using the FCA's DBAAT. Lighthouse feels this hasn't been taken into account and that the DBAAT and methodology used by the regulator has been ignored by our investigator when assessing this complaint.

I can assure Lighthouse that I've considered the Skilled Person's assessment and all the documents that were provided with it. The DBAAT is designed to help establish and guide users whether DB transfer advice was suitable in a specific case. In this case, based on the data inputs in the DBAAT, the suggested suitability rating was actually graded as "Potentially unsuitable". But the Skilled Person decided to override this and concluded the advice was suitable mainly on the basis that the PPP was projected to meet Mr D's income need but only by taking into account income from other sources including Mrs D's DB pensions and their State pensions.

However, I'm considering this advice independently and I'm not bound by what the Skilled Person decided. As set out at the beginning of this provisional decision, I've taken into account COBS 9 and COBS 19 as well as the Principles, FCA rules and guidance and good industry practice. And, having done so, I've reached a different outcome for the reasons set out above. This doesn't mean I used different considerations to the regulator. I simply don't agree with some of the answers the Skilled Person gave in the DBAAT and the ultimate outcome that was reached. For example, I don't think there was sufficient evidence on file that flexible benefits or maximising death benefits were in Mr D's best interests; that the transfer analysis supported a recommendation to transfer or that early retirement objectives couldn't be met by the PPF.

<u>If properly informed, would Mr D have transferred anyway?</u>

In potential mitigation of Lighthouse's advice, I've also thought about whether Mr D, if placed in a fully informed position, would nevertheless have decided to transfer the value of his safeguarded benefits to a PPP. This was a complex transaction involving many factors which Mr D, as a layperson, wouldn't have been familiar. It's my view, given his lack of investment knowledge and experience, that he was heavily reliant on Lighthouse, as the professional party in the transaction, to take those factors into account and provide suitable, balanced advice.

Mr D might have chosen to transfer against advice on the basis of his concerns. However, bearing in mind that many members transferred to the PPF or BSPS2 even though such concerns were widely held, and bearing in mind also his lack of investment experience and attitude to risk, I don't think, on balance, that he would've insisted on transferring. Given Mr D's reliance on Lighthouse, I think it's likely he would've accepted a recommendation for the PPF had it advised him to take that course of action."

In summary, my provisional decision was that it was fair and reasonable to uphold this complaint based on the available evidence. I went on to set out what I considered was fair compensation on the basis that Lighthouse 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. I also said that Lighthouse should pay Mr D £300 compensation for the trouble and upset caused by its unsuitable recommendation.

I asked both parties to this complaint to provide any further comments or evidence that they wanted me to consider before I made my final decision.

Mr D stated that he agreed with my view and proposed remedy. He requested that in my final decision I direct Lighthouse to use a qualified actuary to oversee the loss calculation because the value of his PPP has been combined with another pension fund since the pension transfer.

Lighthouse replied and stated while it disagreed with my provisional decision it was prepared to settle Mr D's complaint informally in line with my proposed remedy. It said that this meant it wasn't necessary for me to issue a final decision on this complaint at this time. It asked whether I was prepared to postpone issuing my final decision until such time as Mr D was able to consider its settlement offer.

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.

When considering what's fair and reasonable, and in accordance with the Financial Services and Markets Act 2000 and the Dispute Resolution section in the FCA's handbook, I need to take into account relevant: law and regulations; regulators' rules, guidance and standards, and codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

The findings I made in my provisional decision and set out above form part of this final decision. Given the responses received, I see no reason to depart from my provisional decision of 14 September 2023 to uphold Mr D's complaint or my proposed remedy.

I acknowledge Lighthouse's request that I delay issuing this final decision. But I see no compelling reason to do so given that it says it's prepared to settle any redress due to Mr D in line with my proposed remedy. To prevent any further delay in resolving this complaint, I've decided to proceed and issue my final decision.

Putting things right

A fair and reasonable outcome would be for Lighthouse to put Mr D, as far as possible, into the position he would now be in but for the unsuitable advice he was given.

Our investigator concluded that given Mr D's circumstances and objectives, Lighthouse should've advised him to transfer to the PPF on the basis of prospective early retirement at age 55. I have a different view. As I've explained above, I think that suitability advised Mr D would've envisaged using his DC pension savings in the first instance before taking benefits from the PPF from age 58. So, compensation should be based on Mr D taking benefits from the PPF at age 58.

I recognise that there would be a 10% reduction in the starting pension entitlement within the PPF and that income in respect of service before 6 April 1997 wouldn't escalate in payment.

The BSPS2 wouldn't cut the starting entitlement for deferred members. But the reduction for early retirement under the PPF, proposed here at 58, was lower and would likely have more than offset the 10% reduction. The commutation factor for converting pension income into tax-free cash was also slightly more favourable under the PPF compared to the BSPS2 – and it's my view that maximum tax-free cash was attractive to Mr D. And so both the starting income and the tax-free cash would likely have been higher under the PPF compared to the BSPS2.

A fair and reasonable outcome would be for Lighthouse to put Mr D, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr D would've remained a member of BSPS and subsequently moved with it to the PPF as explained above.

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 D and our service upon completion of the calculation.

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 D's acceptance of my final decision.

I understand that since the pension transfer, the value of Mr D's PPP has been combined with another pension fund. Lighthouse should therefore consider how to apportion the DC fund value attributable to the BSPS transfer value and obtain actuarial support where required, in line with DISP App 4.2.7G.

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 D redress as a cash lump sum payment,
- explain to Mr D before starting the redress calculation that:
    - his 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 his redress prudently is to use it to augment their DC pension
- offer to calculate how much of any redress Mr D receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr D accepts Lighthouse's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr D for the calculation, even if he ultimately decides not to have any of his redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr D's end of year tax position.

Redress paid to Mr D 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've been taxed according to Mr D'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.

In addition, Lighthouse should pay Mr D £300 compensation for the trouble and upset caused by its unsuitable recommendation.

My final decision

Determination and money award: I uphold this complaint and require Lighthouse Advisory Services Limited to pay Mr D the compensation amount as set out in the steps above, up to a maximum of £160,000. Where the compensation amount doesn't exceed £160,000, I would additionally require Lighthouse Advisory Services Limited to pay Mr D any interest on that amount in full, as set out above. Where the compensation amount already exceeds £160,000, I would only require Lighthouse Advisory Services Limited to pay Mr D any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Lighthouse Advisory Services Limited pays Mr D the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr D.

If Mr D accepts this final decision, the money award becomes binding on Lighthouse Advisory Services Limited. My recommendation wouldn't be binding. Further, it's unlikely that Mr D can accept this final decision and go to court to ask for the balance. Mr D may want to consider getting independent legal advice before deciding whether to accept this final decision.

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