DRN-4505944

The complaint

Mr D complains about the outcome of the review carried out by Lighthouse Advisory Services Limited ("Lighthouse") in connection with the FCA's consumer redress scheme for the British Steel Pension Scheme ("BSPS") – to make my findings easier to follow, I'll refer to this as the "redress scheme".

Mr D is represented in this complaint by a law firm (the "Representative").

What happened

The sequence of events isn't in dispute, so I've only set out a brief summary of what happened.

In July 2017, Lighthouse advised Mr D to transfer the value of his safeguarded benefits in the BSPS of £414,474 to a personal pension plan ("PPP"). The pension transfer to the PPP was completed in October 2017.

The redress scheme

In November 2022, the FCA announced its final rules (set out in PS22/14) for the redress scheme after it had identified that many former members of the BSPS were given the wrong advice to transfer away from the scheme. The redress scheme started in February 2023. The rules for the redress scheme require firms to identify scheme cases following certain criteria. Once identified, firms need to review the advice they gave to former BSPS members in these cases – and then tell them if the advice was suitable or not. As part of the review process, firms are required to use the FCA's BSPS Defined Benefit Advice Assessment Tool ("DBAAT"). The review can lead to one of two outcomes:

- The advice is rated as "suitable" and the case is closed; or
- The advice is rated as "unsuitable" – if so, the case progresses to a calculation and the payment of redress if it's shown the consumer suffered a financial loss

If the consumer disagrees with the outcome, they can ask the Financial Ombudsman Service ("FOS") to look at whether the review was carried out correctly in line with the rules of the redress scheme.

Lighthouse's review of the advice it gave Mr D

In March 2023, the Representative contacted Lighthouse to complain about the suitability of the pension transfer advice given to Mr D in July 2017. Lighthouse confirmed to the Representative that the advice it gave to Mr D fell within scope of the redress scheme and that it would review his case. It obtained additional information from Mr D to enable it to complete the review.

In July 2023, Lighthouse contacted Mr D to confirm that it had found the advice it had given him was suitable and so it wouldn't be taking any further action.

FOS's assessment

The Representative, on behalf of Mr D, disagreed with Lighthouse's assessment of his case. So it referred the matter to us.

In November 2023, one of our investigators recommended that this complaint be upheld because she had concerns Lighthouse hadn't followed the FCA's rules for the redress scheme. She explained the reasons why in her assessment. To put things right, our investigator recommended that Lighthouse amend the review outcome on Mr D's case under the redress scheme to "unsuitable" and then go on to calculate and pay any redress due to him in line with the redress scheme rules.

In December 2023, Lighthouse replied to state that it didn't accept our investigator's view. It stated that the pension transfer advice provided to Mr D had previously been assessed as suitable by an FCA-appointed 'Skilled Person' and that its response on the redress scheme was consistent with this. In its view, its answers on the DBAAT were correct and supported its view that the advice was suitable. It requested time to provide a more detailed response but didn't provide any further comments or evidence.

This complaint has now been allocated to me to review and decide. This is the last stage of our process.

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.

Scope of this final decision

I'd like to clarify to the parties that the scope of this final decision is limited only to evaluating the adequacy of Lighthouse's assessment of Mr D's case under the redress scheme.

I note that in its most recent correspondence with this service in December 2023 that Lighthouse stated it intended to provide a more detailed response to our investigator's assessment. As at the date of this decision, this service hasn't received any further comments or evidence from Lighthouse. I'm satisfied that it has had sufficient time to respond. So, to avoid any further delay, I think it's fair and reasonable to proceed and issue my decision based on the available evidence.

The FCA's BSPS DBAAT

As noted above, the rules of the redress scheme require firms to use the FCA's BSPS DBAAT. In summary, the tool helps firms assess the suitability of pension transfer advice by considering whether, based on the evidence on the consumer's file, any of 12 examples of unsuitability are present. For each example, the firm, in its role as assessor, should simply answer "yes" or "no" to indicate whether or not the example is present considering the consumer's circumstances and FCA guidance at the time of the advice.

If an example is present on the consumer's file it may indicate failure to comply with the FCA's suitability requirements for pension transfer advice. Once all 12 suitability questions are answered, the tool suggests a rating. If one or more examples are present, the tool will suggest that the advice is "potentially unsuitable" and the pension transfer is not likely to be in the consumer's best interests. If no examples are present, the tool will suggest that the advice is "potentially suitable". But the tool only provides a suggested rating. It's for the assessor to make a final judgment, taking account of the available evidence, whether it considers the advice is suitable or not. In all cases the assessor must explain its reasoning for the final judgment.

Lighthouse's review of the advice it gave Mr D

Lighthouse has confirmed that the pension transfer advice provided to Mr D had been assessed as suitable by an FCA-appointed Skilled Person. It's provided a copy of the DBAAT completed by the Skilled Person. The DBAAT was updated in May 2023 to include additional information provided by Mr D in response to this complaint.

The completed DBAAT shows that one (Example 1) of the 12 examples of unsuitability applied to Mr D's case. This generated a suggested rating of "potentially unsuitable". But Lighthouse finalised the advice rating as "suitable" based on the following rationale:

> *"On balance we consider the advice to transfer to be suitable.*
>
> *We consider the client was reliant on the monies from the scheme. The scheme is his largest asset and to that extent he is reliant on it to meet his income needs in retirement. It appears that the partner appears to have a pension valued at £25k and the client was a member of his employer's DC scheme. It's possible that further additional pension savings would have made over the term to retirement however this could not be guaranteed. The firm has produced a cashflow document which indicates the client could run out of money by age 94, however this does not include any additional pension savings which the client and spouse could accrue in the term to retirement, nor the spouse's modest pension benefits of £25k. The assumed average return was 5% p.a. which we consider not unreasonable given the client's attitude to investment risk although we would have preferred to see some stress testing undertaken.*
>
> *The client and spouse were not married and had no plans to marry, and as such it appears the partner would not benefit from any benefits from the scheme in the event of the client's death. We consider this to be a key point given that the file is consistent in stating that the spouse had no pensions of any significance in her own right, and would therefore be reliant on the client for income during retirement, and after his death.*
>
> *It appears that the client could have met his income requirement from the scheme at age 60 by taking full PCLS and using this sum to top up his income over the 7 years to state pension age, however this would have left the client with very little in the way of assets at that point, and as outlined above, the partner would not be able to receive any benefits from the scheme benefits, and therefore could be left in financial hardship in the event of the client's death.*
>
> *The client had an above average attitude to investment risk, and the flexibility to draw a higher income in the earlier years and reduce it at the state pension age would understandably be a desirable objective."*

I've reviewed the answers on the completed DBAAT. For largely the same reasons, I agree with our investigator's view that Lighthouse didn't follow the redress scheme rules when it assessed Mr D's case. In particular, based on the contemporaneous evidence and the redress scheme instructions in CONRED 4 Annex 21, I think Lighthouse, in its role as assessor, should've answered "yes" to the following examples of unsuitability:

Example 1: The client is, or will be, reliant on income from the comparator scheme

For the record, it's my opinion that the assessor should've answered "yes" to Example 1. When completing the DBAAT, Lighthouse also answered "yes" to this question. Since we share the same opinion, I don't think it's necessary to scrutinise its reasoning here.

Example 2: The aim of the transfer is to pass the value of the pension to beneficiaries on the member's death, but the firm has not demonstrated that the consumer can bear the risk of the transfer that would be needed to achieve this objective

Under this question the assessor was required to consider whether the pension transfer was required to achieve Mr D's death benefit objective and – if so – whether he was able to bear the risk of the transfer. Under reference 10.5R (3), the assessor is required to identify whether there was an alternative way to meet the objective without giving up comparator scheme benefits.

Mr D was then aged 53, in good health and his marital status was single. He was co-habiting with his partner who wouldn't have been entitled to a spouse's pension under the BSPS or the successor scheme, the BSPS2. In the suitability report it was recorded that Mr D was worried that changes to the BSPS may prevent him from being able to control his pension benefits and leave a legacy for his partner in the event of his earlier death.

There's no contemporaneous evidence that any or a combination of the following alternative ways to meet the death benefit objective were adequately considered and discounted by Lighthouse:

- using Mr D's disposable income to obtain level or decreasing term assurance;

- using Mr D's available death in service benefits provided by his then employer (which would've been based on a multiple of his annual salary of £43,164) which would be paid to any nominated beneficiary his death including his partner;

- using Mr D's personal contributions paid into the BSPS (and BSPS2 had he been advised to select that option) which would be refunded to any nominated beneficiary on his death including his partner (at that time, his personal contributions were £62,540 plus interest); and/or

- using the value of Mr D's defined contribution ("DC") workplace pension plan to provide death benefits.

This wasn't addressed by the assessor when it completed the DBAAT. With reference to 10.5R (4), the assessor is required to decide whether the firm has a reasonable basis for believing that the recommendation to transfer in order to pass the value of the pension to beneficiaries on death met the consumer's investment objectives; and that the consumer is able financially to bear any transfer-related risks consistent with their investment objective.

It's not in dispute that Mr D will be reliant on income from the comparator scheme, as set out in Example 1. It's my view that Lighthouse failed to demonstrate that Mr D had the requisite capacity for loss to be able to relinquish his safeguarded benefits. I think it's also clear that lower risk suitable alternative options were available to achieve his death benefit objective but Lighthouse failed to adequately consider these, as noted above.

Since Mr D was aged 53 and in good health at the time, he could reasonably expect to live well into his 80s based on average life expectancy. It's fair to say that immediately following the transfer to the PPP and for the period until Mr D was able to withdraw retirement benefits, the death benefits available would be significant (subject to investment performance) until such time as he accessed and depleted the fund value. But once he started withdrawing money from the PPP to meet his income and lump sum needs, it would likely mean that the size of the fund remaining in later years – when death is more likely – could be much smaller than expected.

Mr D wanted to retire at age 60. The TVAS report showed that based on taking a similar level of benefits in retirement as the BSPS from age 60, the PPP fund value would last until age 82 if taken as income only or age 86 if taken as reduced income and the maximum tax-free lump sum. This assumed a medium rate of return which of course wasn't guaranteed. Cashflow modelling carried out by Lighthouse showed that Mr D wanted annual income of around £20,000 in retirement from age 60 and that, based on this, his PPP fund would run out by age 94 assuming the PPP achieved investment growth of 5% per year, income reduced by the state pension from age 67 and increased by 2.5% per year.

In my view, the TVAS report and cashflow modelling analysis support the case that Mr D would use most or possibly exhaust his pension savings, particularly if he lived beyond average life expectancy which of course is a possibility. Even based on average life expectancy it's clear that there will be minimal death benefits available to his partner on his death. This ought to have been apparent to Lighthouse.

Taking into account the above, it's my view that Lighthouse didn't have a reasonable basis for believing that the recommendation to transfer in order to pass the value of the pension to beneficiaries on Mr D's death met his objective or that he was able financially to bear any transfer-related risks consistent with this investment objective.

Under reference 10.6E (1), (2) and (3), the assessor is directed to answer "yes" to Example 2 when the available evidence demonstrates that:

- the consumer didn't have the requisite capacity for loss because they were not able to forego comparator scheme benefits to achieve this objective; and/or
- a lower risk suitable alternative was available to achieve this objective; and/or
- it was likely that the consumer would exhaust their pension savings during their lifetime and so there will be minimal death benefits available.

Given the above points, it's my opinion that the assessor should've answered "yes" to Example 2.

Example 3: The aim of the transfer is to access income-related benefits flexibly but the firm has not demonstrated that the consumer can bear the risk of the transfer that would be needed to achieve this objective

Under reference 10.9E, the assessor is required to answer "yes" to this question where the following apply:

- (1) the consumer doesn't have the requisite capacity for loss because they weren't able to forego scheme benefits to achieve this objective; and/or
- (2) there is an alternative way for the consumer to meet their objectives using other assets instead of transferring their BSPS scheme.

The suitability report stated that Mr D was keen to transfer his pension into a more flexible environment because he wanted to provide flexible death benefits for his beneficiaries, be able to control his pension investment and choose when and how to access benefits from age 60.

Flexibility and control might sound attractive, but I can't see that Mr D had any concrete need for it. There's no real evidence that Mr D required the flexibility of irregular lump sums or variable income during retirement. Rather, the evidence indicates that he required a steady and reliable source of income when he retired in line with his annual income need of around £20,000 from age 60. But if he did require flexibility, there were alternative, lower risk options available:

- saving some of Mr D's disposable income while he was still working in either a pension, investment or savings account to provide flexible income or lump sums rather than transferring and losing benefit guarantees; and/or

- using the tax-free cash available under the BSPS2 (had he been advised to select that option) or the DC pension scheme offered by his then employer.

It was noted in the suitability report that Mr D intended to use his tax-free cash to repay his credit card debt of around £20,000. But he was then aged 53 and so couldn't access any pension benefits under the PPP until age 55 at the earliest. So transferring at that time wouldn't have enabled him to immediately repay the debt. Rather, he'd need to wait until at least age 55. In any event, the specific details of the £20,000 debt weren't recorded other than to note that Mr D had used a debt management company to help clear the credit card debt. So it seems that the matter was already being dealt with in terms of a repayment plan. From what I can see, the monthly payments under the management plan were affordable. So I cannot see any compelling reason why it was necessary to transfer at that time for debt repayment purposes and in doing so relinquish valuable guaranteed income.

Overall, it's my view that Lighthouse failed to adequately consider and discount alternative, lower risk options to achieve any flexible needs rather than relinquishing a guaranteed lifetime income.

As explained in Examples 1 and 2 above, it's my view that Mr D didn't have the requisite capacity for loss to be able to relinquish his safeguarded benefits.

Given the above points, it's my opinion that the assessor should've answered "yes" to Example 3.

Example 5: an aim of the transfer is to preserve or protect the value of the consumer's pension benefits but the comparator scheme(s) benefits would meet the consumer's needs

Under reference 10.17E, the assessor is required to answer "yes" to this question where the following apply:

- (1) (a) the level of comparator scheme benefits meets the consumer's income needs

Lighthouse calculated the following estimated benefits payable by the BSPS:

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	At age 60 based on Mr D taking a full pension only	At age 60 based on Mr D taking a reduced pension and maximum tax-free

	cash		**cash**
£21,488 per year		£16,033 per year	
	£14,241 per year plus £94,940 tax-free lump sum		£11,007 per year plus £73,381 tax-free lump sum

I acknowledge that the BSPS2 would've likely provided a marginally lower level of estimated benefits due to the lower revaluation rates applied to the pension in deferment compared to the BSPS. But nevertheless, the figures above provide a reasonable indication of the level of benefits Mr D might have received under the BSPS2 had he selected that option.

Lighthouse established that Mr D wanted annual income of around £20,000 in retirement from age 60. In my view, the estimated figures in the table above, including the tax-free lump sum used to supplement the pension income, indicate that the level of comparator scheme benefits would be sufficient to meet Mr D's identified income need for the seven-year period until his state pension started at age 67 – at which point the combination of guaranteed scheme pension and state pension would meet his overall income need for the remainder of his life. Lighthouse agrees because it stated as much in its rationale in the DBAAT.

I think it's worth highlighting that this analysis doesn't include the value of Mr D's DC pension savings built up during the period between age 53 and 60, providing access to a further flexible fund to supplement the scheme pension from age 60, if required.

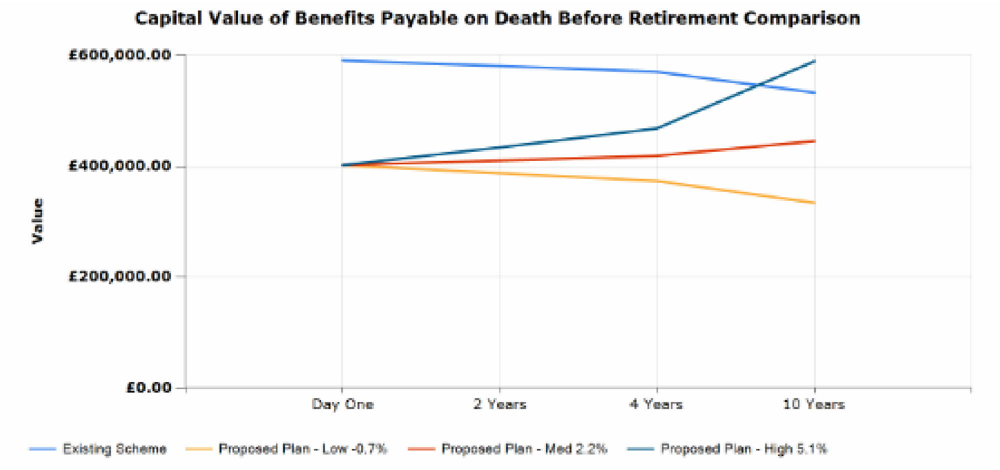
The assessor didn't address these points in the DBAAT. Given the above points, it's my opinion that the assessor should've answered "yes" to Example 5.

Example 9: The firm's transfer analysis does not support a recommendation to transfer

Under reference 10.27E (1) (a), the assessor is required to answer "yes" to this question when the firm hasn't demonstrated that the transfer analysis supports the recommendation to transfer, for example because: (i) the critical yield indicated in the transfer value analysis is likely to be unattainable, factoring in the term to retirement and the consumer's attitude to investment risk; or (ii) the capitalised value of death benefits (where this is a priority objective) is significantly higher under the comparator scheme(s) than that available from the proposed arrangement.

In Mr D's case, he planned to retire at age 60. The critical yield figures at age 60 calculated by Lighthouse were 12.94% on the basis Mr D took a full pension only or 8.52% on the basis he took a reduced pension and maximum tax-free lump sum. Lighthouse recommended that Mr D invest the value of his PPP into a fund that aligned with his recorded 'high medium' risk profile. The key features illustration for the PPP showed that the assumed growth rates were 5.1% for the upper projection rate, 2.2% for the middle projection rate and -0.7% for the lower projection rate. Those figures took into account assumed annual future inflation of 2.5%. It's my view that the critical yield figures of 12.94% and 8.52% were likely to be unobtainable based on the rates of return shown on the illustration and Mr D's risk profile.

Furthermore, according to the TVAS report, the capitalised value of death benefits under the BSPS were significantly higher than the PPP at all points over the next 10-year period based on the middle and lower projection rates as shown in the excerpt below:



I think this analysis showed that it was likely Mr D would be financially worse off as a result of the pension transfer.

Given the above points, it's my opinion that the assessor should've answered "yes" to Example 9, particularly given my view that Mr D was reliant on the income (Example 1) and didn't require flexibility with these benefits (Example 3).

Conclusion

Based on the above considerations, it's my opinion that Lighthouse failed to follow the FCA's rules for the redress scheme when it assessed Mr D's case. Specifically, for the reasons explained above, it's my view that had it followed the guidance correctly, it would've answered "yes" to unsuitability examples 1, 2, 3, 5 and 9 in the DBAAT. The tool would've then generated a suggested rating of "potentially unsuitable". Considering the evidence in the round, I cannot see any compelling reason why a suggested rating of "potentially unsuitable" should be overturned to "suitable".

Causation

I've considered the points under reference 11.7G (1) to (9) in the Causation Section under the redress scheme rules to decide whether I think it's more likely than not that Lighthouse's non-compliant conduct was the effective cause of Mr D's decision to transfer. 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 balanced and suitable advice regardless of his own views.

Overall, it's my view that Lighthouse's conduct is more likely than not to have caused Mr D to transfer to the PPP when this was not in his best interests. Given Mr D's reliance on Lighthouse to provide suitable advice, I think it's unlikely he would've still decided to transfer to a PPP against its advice had it advised him to opt for the BSPS2 instead.

Putting things right

Lighthouse must do the following:

1. Amend the DBAAT so that in addition to Example 1, unsuitability Examples 2, 3, 5 and 9 are also marked as 'yes' on the relevant tab and the *'Assessor's suitability rating'* is marked as "unsuitable" – and then update the section covering rationale

with appropriate comments to support the conclusion;

2. Calculate and pay any redress due to Mr D in line with the redress scheme rules; and

3. Ensure that any relevant records and reporting to the FCA are updated accordingly to reflect the change in outcome on Mr D's case.

My final decision

I uphold this complaint. I direct Lighthouse Advisory Services Limited to follow the steps set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 1 May 2024.
Clint Penfold
Ombudsman