DRN-4550083

## The complaint

Ms M complains that an appointed representative of Lighthouse Advisory Services Limited ("Lighthouse") provided her with inappropriate advice in 2008 about the transfer and consolidation of some pension savings.

## What happened

Ms M was initially assisted in making her complaint by a claims management company ("CMC"). More recently she has been represented by a firm of solicitors. But in this decision, for ease, I will generally refer to all communication as if it has been with, and from, Ms M herself.

I issued a provisional decision on this complaint in November 2023. In that decision I explained why I thought the complaint should be upheld and what Lighthouse needed to do in order to put things right. Both parties have received a copy of the provisional decision but, for completeness, I include some extracts from it below. In my decision I said;

> *Ms M held pension savings in four separate pension plans. In 2008 she was given advice by an appointed representative of Lighthouse. Although Ms M had no direct contact with Lighthouse itself, that firm is responsible for the actions of its appointed representative and for dealing with this complaint. In this decision, again for ease, I will simply refer to the advising business as Lighthouse throughout.*
>
> *Lighthouse hasn't been able to provide us with a copy of the advice it gave to Ms M, or any documentation from the time such as an assessment of her circumstances and attitude to risk. But it is apparent that, following Lighthouse's advice, Ms M consolidated her pension savings and transferred them from the four individual schemes into a new self-invested personal pension plan ("SIPP").*
>
> *Lighthouse says that the person who provided the advice to Ms M left the firm in 2009 so it isn't responsible for any advice he gave her after that date. And it seems that Ms M took some new advice from an alternative firm in 2017. At that time she started to make pension contributions to her SIPP. But, following discussions with the CMC in 2021 Ms M complained to Lighthouse about the advice she had received in 2008.*
>
> *In brief she said the advice was unsuitable because her personal circumstances (especially her objectives, risk profile, investment inexperience and capacity for loss) were not properly assessed and considered in the production of the advice. She said that had that been done properly, the unsuitability of the switch would have been apparent. She thought that her existing pension plans would have provided an equally adequate retirement fund for her without having to incur the extensive costs associated with the switch. And she thought that the underlying investment recommended for the SIPP also mismatched her profile.*

*Lighthouse told Ms M that it thought her complaint had been made too late. But that matter has been considered by another ombudsman. He thought that Ms M's complaint had been made in time, and so was one that we could consider.*

*It is disappointing that Lighthouse has not been able to provide me with any information from the time that the advice was given to Ms M in 2008. That does present me with some problems in deciding this complaint. To reach a fair outcome I need to make some assumptions about the advice that was given to Ms M. But I am satisfied that, within those bounds, I am able to reach a decision about what is most likely to have happened.*

*Ms M held pension savings in four separate pension plans. She has provided some details of those pension plans, and the values of pension savings they held at the time the advice was given. From that information I can see that the total amount Ms M was advised to transfer was just over £40,000 with the transfers completing between July and September 2008. Each of Ms M's pension plans was held with a large mainstream provider.*

*I haven't seen any evidence of the investments that Lighthouse would have recommended Ms M to use following the transfer. But Ms M was not a sophisticated investor, and appears to have had little experience of making decisions of this nature. So I think it likely that Ms M would have been advised to invest her pension savings in mainstream investments to be held in her SIPP.*

*But making those changes would come at a considerable cost to Ms M, both in terms of any administration costs in operating the SIPP, and most importantly in the fee that she would have needed to pay to Lighthouse for the advice. So I would need to be persuaded that the likely benefits of the transfer, in terms of investment returns or needed flexibility, would have outweighed those costs.*

*As I said earlier, Ms M's pension plans were all held with large mainstream providers. In my experience those plans would have offered a wide range of investments that would be suitable for someone in Ms M's circumstances. I haven't seen anything to make me think that Ms M needed any of the additional investment choices that a SIPP might have offered to her. And given the apparent lack of any agreement for the future ongoing servicing of her pension by Lighthouse, I think it unlikely that any investment returns could have been reasonably expected to be materially better.*

*I haven't seen any evidence to support Ms M's complaint that Lighthouse failed to correctly assess her attitude to risk. Given the time that has passed Lighthouse hasn't been able to provide us with the assessment it says would have been completed. But I don't think that leads to a reasonable conclusion that no assessment was done, or that any results were incorrect. I think it might be perfectly reasonable to conclude that the SIPP, and the investments it held, were appropriate for Ms M's circumstances.*

*But, for the reasons I've explained earlier, I'm not persuaded that it was necessary for Ms M to make those transfers, or that the benefits of doing so would make them attractive for her circumstances. So I cannot reasonably conclude that the advice Lighthouse gave her in 2008, to transfer her pension savings into the new SIPP, was appropriate.*

*Ms M has confirmed that she took new financial advice in 2017 although she hasn't been able to provide is with a copy of those recommendations. It appears that, following the advice, Ms M started making additional contributions to her SIPP.*

*I accept Lighthouse's argument that in order for the new advice to be provided the financial advisor would have assessed the suitability of the SIPP for Ms M's circumstances. And since she retained the SIPP and started making new contributions, it is likely that the advisor concluded the SIPP was suitable for Ms M's needs.*

*But I don't think it follows that the assessment of suitability made in 2017 means that the SIPP was suitable for Ms M in 2008. And, as I've explained above, even if it were broadly suitable for her in 2008, it doesn't necessarily follow that the advice she was given was appropriate. Given the costs involved in making the transfer, a move from one suitable product to another, for little additional benefit, is unlikely to represent suitable advice.*

*I am however minded that the new advice Ms M received in 2017 should be seen as the point at which Lighthouse's responsibility for any losses she incurred should cease. From that point Ms M was effectively not acting in accordance with the recommendation she had previously received from Lighthouse. She was free at that time to move her pension savings into an alternative plan, or into alternative investments, if those were more suitable for her circumstances at that time. And she would have done that based on the advice she received from the new advisor. So, as I have already explained to Ms M, I intend to cap the redress that is due from Lighthouse at that point. I don't have an exact date for when that advice was given, but the first contribution Ms M made following the advice was on 7 November 2017. I think that is a reasonable point for me to use as the end of Lighthouse's responsibility.*

*In summary I haven't seen any evidence to persuade me that the advice Ms M was given in 2008, to consolidate her pension savings, was appropriate for her circumstances at that time. It follows that I intend to uphold her complaint and direct Lighthouse to pay her some compensation.*

I invited both parties to provide us with any further comments or evidence in response to my provisional decision. Both Ms M and Lighthouse have said they accept my provisional findings. Lighthouse has said that, given the time that has elapsed since the transfer it doesn't think it will be able to reconstruct Ms M's previous investments. So it says it will need to use the benchmark I suggested to calculate the compensation. And it has asked that Ms M provide it with the information it needs about the value of her pension investments in 2017, or authority to contact her pension provider.

**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 I set out in my provisional decision, in deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Ms M and by Lighthouse. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

And I repeat my reflections on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

Given that both Ms M and Lighthouse have accepted my provisional findings I see no reason to change my conclusions about this complaint. I agree with what Lighthouse has said about the need to use a benchmark when calculating the compensation due to Ms M and have amended my directions accordingly. And I have added the requirement for Ms M to provide Lighthouse with the information it needs, or the authority to contact her pension provider, in order for any compensation to be paid.

So for the reasons given in my provisional decision, and set out above, I haven't seen any evidence to persuade me that the advice Ms M was given in 2008, to consolidate her pension savings, was appropriate for her circumstances at that time. It follows that I uphold her complaint and direct Lighthouse to pay her some compensation.

**Putting things right**

**Fair compensation**

My aim is that Ms M should be put as closely as possible into the position she would probably now be in if she had been given suitable advice.

I think Ms M would have remained with her previous providers, however I think it unlikely that a value will be obtainable for what the previous policies would have been worth. I am satisfied that what I have set out below is fair and reasonable, taking this into account and given what I know of Ms M's circumstances and objectives when she agreed to the transfers.

**What must Lighthouse do?**

To compensate Ms M fairly, Lighthouse must:

- Compare the performance of Ms M's SIPP with the notional values calculated by means of the benchmark set out below. If the actual value is greater than the notional value, no compensation is payable. If the combined notional value is greater than the actual value, there is a loss and compensation is payable.

- Lighthouse should also add any interest set out below to the compensation payable.

- If there is a loss, Lighthouse should pay into Ms M's pension plan to increase its value by the amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

- If Lighthouse is unable to pay the compensation into Ms M's pension plan, it should pay that amount direct to her. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Ms M won't be able to reclaim any of the reduction after compensation is paid.

- The notional allowance should be calculated using Ms M's actual or expected marginal rate of tax at her selected retirement age.

- I think it’s reasonable to assume that Ms M is likely to be a basic rate taxpayer at her selected retirement age, so the reduction would equal 20%. However, if Ms M would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

Income tax may be payable on any interest paid. If Lighthouse deducts income tax from the interest, it should tell Ms M how much has been taken off. Lighthouse should give Ms M a tax deduction certificate in respect of interest if Ms M asks for one, so she can reclaim the tax on interest from HM Revenue & Customs if appropriate.

| Portfolio name | Status | Benchmark | From ("start date") | To ("end date") | Additional interest |
|---|---|---|---|---|---|
| SIPP | Still exists and liquid | As set out below | Date of pension switch | 7 November 2017 | 8% simple per year from final decision to settlement (if not settled by the later of 28 days from this final decision, or 28 days of the business receiving details of the end position from Ms M, or her authority to request that information from her pension provider) |

**Actual value**

This means the actual value of the SIPP at the end date.

**Notional Value**

This is the value of Ms M's investments would have had if they remained with the previous providers until the end date. As I think it unlikely the previous providers will be able to calculate a notional value, Lighthouse will need to determine a fair value for each of Ms M's pension plans instead, using this benchmark: For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds. The adjustments below also apply to the calculation of a fair value using the benchmark, which is then used as the notional value in the calculation of compensation.

Any additional sum paid into the SIPP should be added to the notional value calculation from the point in time when it was actually paid in.

Any withdrawal from the SIPP should be deducted from the notional value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there are a large number of regular payments, to keep calculations simpler, I’ll accept if Lighthouse totals all those payments and deducts that figure at the end to determine the notional value instead of deducting periodically.

**Why is this remedy suitable?**

I’ve chosen this method of compensation because:

- Ms M wanted Capital growth with a small risk to her capital.
- As the previous providers are unlikely to be able to calculate a notional value, then I consider the measure below is appropriate.
- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to her capital.
- The FTSE UK Private Investors Income Total Return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.
- I consider that Ms M's risk profile was in between, in the sense that she was prepared to take a small level of risk to attain her investment objectives. So, the 50/50 combination would reasonably put Ms M into that position. It does not mean that Ms M would have invested 50% of her money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Ms M could have obtained from investments suited to her objective and risk attitude.

## My final decision

My final decision is that I uphold Ms M's complaint and direct Lighthouse Advisory Services Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 9 February 2024.

Paul Reilly
**Ombudsman**