

## **complaint**

Mr B complains about Lighthouse Advisory Services Limited. He says it advised him to transfer his existing pension plans to a Self-Invested Personal Pension (SIPP). But when he chose to use a different SIPP provider to the one it recommended, it refused to sign the appropriate form and declaration confirming it had given advice.

## **background**

On 25 July 2017 Lighthouse wrote to Mr B with its recommendations for the transfer of his pension plans. Its letter confirmed that it was 'authorised to advise' Mr B on the matters covered in the report. And it confirmed that having reviewed Mr B's overall situation, it was providing him with 'recommendations' based on its understanding of his aims and objectives.

In short, Lighthouse recommended Mr B transfer his existing pension plans with two providers that I'll call P and F, into a SIPP with a third party pension administrator that I'll call A. Both these plans had guaranteed benefits.

Lighthouse explained that by transferring from P, 'the guaranteed basic pension will be lost'. It also explained that the plan was invested in a with profits fund, which had previously declared a bonus of 0%. As a result, Lighthouse said that Mr B wasn't achieving any investment growth on this plan, and this wasn't 'in line' with his agreed risk profile or objectives.

Lighthouse also considered that if Mr B agreed to transfer from F, he would lose the 'very valuable guaranteed annuity rates. But here too Lighthouse explained that the bonus rate on the With Profits Fund the plan was invested in was 0%.

The report said that Mr B's main priority was to release his tax free cash at the time in order to help fund a property development. It explained that Mr B had other assets available, and his accumulated pension funds represented a relatively small amount of his overall asset wealth. And it said that he didn't need a guaranteed income at that point, but wanted to retain the flexibility of withdrawing a varied income in the future. It confirmed he was aware of the risks with the type of pension Lighthouse was recommending he transfer to.

It confirmed that by taking his tax-free cash at that point he was potentially reducing the value of his pension fund, and the income available from it, once he retired.

Lighthouse warned Mr B again that on transferring his pension funds, Mr B would lose 'valuable guarantees'. But it said that Mr B wanted to take the tax free cash without the requirement for a guaranteed income. And it explained that by entering into 'flexi access drawdown' Mr B would have 'flexibility of income', the 'control' of his pension funds and 'the ability to invest the tax-free cash into property thereby generating additional income on retirement'.

Lighthouse therefore recommended that Mr B transfer the accumulated pension funds into a SIPP with A. It recommended the SIPP be invested on a platform I'll call N. And it recommended four specific investment funds that the remainder of Mr B's pension should be invested in.

The report confirmed that if Mr B agreed to proceed with Lighthouse's recommendations, he'd have to pay it an initial fee of £4,040.12 (that is, 2% of the transfer monies after the

deduction of the tax-free cash lump sum). And it would receive an ongoing annual fee of 0.5% of the value of his SIPP, paid monthly.

It recommended he take the maximum tax free cash lump sum available (around £67,300). And as he didn't need an income from his pension at that stage, it recommended that the rest of his pension remain invested. It warned Mr B again that in proceeding with the recommendation he would be giving up 'valuable guaranteed benefits'.

The report then provided several enclosures, including A's key features document, the N key features document and key investor information documents for the funds it recommended, and a Money Advice Services Factsheet.

Mr B broadly agreed to proceed with Lighthouse's recommendation. But he didn't agree to go with the SIPP administrator Lighthouse had recommended. Instead, he preferred a different provider I'll refer to as H. He chose H as it had lower fees. He agreed a fee with Lighthouse for the work it had done which was less than the full 2% he would've needed to pay on transfer.

Mr B then made a request to H to have his plans transferred to it. H proceeded with this request at the end of August. And on 12 September 2017 Mr B received a letter from P confirming that it had received the transfer request from H. This letter confirmed that his current plan offered guarantees amounting to more than £30,000 which would be lost on transfer. As a result, he needed to provide it with 'confirmation that advice has been obtained by completion of the attached Transfer Advice Declaration Form'. At around the same time he received a similar letter from F.

Mr B initially wrote back to P and F with a copy of Lighthouse's report but without a copy of the signed form. He said that he thought this was sufficient, and that the form wasn't necessary. But P wrote back and confirmed that the signed declaration needed to be completed. And it said that while it had contacted Lighthouse for this directly, it had confirmed that it was 'not happy to sign the form'. P confirmed that while Mr B 'may not agree with the advice by' his financial adviser, it required 'clear acknowledgment that [Mr B] had sought the appropriate advice'. It said that the form 'must be fully completed by a suitable Independent Financial Adviser'.

F wrote back and explained that it required a letter on company headed paper confirming, among other things, that he had received advice.

Mr B then raised a formal complaint with P and F on the basis that he considered the report he had provided to them was sufficient confirmation that he had received advice.

Following some further correspondence between the parties, P wrote back to Mr B and set out what it considered were the requirements it needed to comply with.

In short, it explained that it had previously asked Lighthouse to complete the form but it 'would not sign the form as [it] had not given advice to transfer'.

It said that Lighthouse's refusal to sign the form could be due to it being 'concerned that because [it] did not recommend the transfer to proceed, [it] may be held accountable at a later date if the transfer does proceed against [its] advice'. But P said that the FCA provided guidance to IFAs 'stating that this will not be the case'. In any event, P confirmed that it couldn't proceed with the transfer without the form being signed.

At the same time, Mr B was liaising with H. He exchanged several emails with it, during which it explained that both P and F required information from his financial adviser which wasn't being provided. It asked him to summarise the advice he had received, and he confirmed that he had been advised to transfer his pension to a SIPP. But that Lighthouse had recommended a different administrator that was more expensive overall – and a lot more expensive when considering the ongoing fees he would have to pay to Lighthouse (as well as the initial £4,000 fee).

In November 2017 Mr B contacted Lighthouse and sent it a copy of a letter from P. This said that it had requested the signed declaration from Lighthouse but Lighthouse had refused because it had not given advice to transfer

Mr B queried with Lighthouse whether this was correct, on the basis that it had actually provided advice to him – just not to transfer to H, but to A.

Lighthouse replied and said that it had 'written a report and it does advise a transfer'. However, it said that the report didn't evaluate a transfer to H, and for that reason it had declined to sign the form P needed. There was some further correspondence, and Lighthouse confirmed that in its view, if it signed the form it 'took the liability'. It said that it would sign the form 'if the advice is taken', but it didn't advise Mr B to transfer to H. As a result, it suggested that it could 'look for an alternative [provider] and charge the implementation fee as an option' if Mr B agreed with that advice. But ultimately, Mr B had chosen a different administrator to the one it recommended.

I issued a provisional decision in June 2018. In it I said:

*I've considered very carefully the rules Lighthouse has referred to, and the various consultation papers and guidance it has quoted from. I don't think there's any dispute that in advising a client on a pension transfer, the adviser must take into account the proposed destination of the transfer funds.*

*But I'm not persuaded this is the key element in dispute here. And so I'm currently still minded to uphold the complaint.*

*The key dispute in this case is that Lighthouse accepts that it gave Mr B advice to transfer his pension in line with Section 48 of the Pension Schemes Act 2015. But it refuses to confirm that it has given Mr B advice for the purposes of a transfer which, it says, it didn't specifically advise on. So the question is whether there's any requirement for a consumer to follow the advice provided by an adviser, in order for that adviser to confirm that advice has been provided.*

*I think it's worth setting out here what the legislation says. Section 48 of the Pension Schemes Act 2015 says:*

*Independent advice in respect of conversions and transfers:*

- (1) Where a member of a pension scheme has subsisting rights in respect of any safeguarded benefits, or a survivor of a member has subsisting rights in respect of any safeguarded benefits, the trustees or managers must check that the member or survivor has received appropriate independent advice before —*
  - (a) converting any of the benefits into different benefits that are flexible benefits under the scheme;*

- (b) making a transfer payment in respect of any of the benefits with a view to acquiring a right or entitlement to flexible benefits for the member or survivor under another pension scheme;*
- (c) paying a lump sum that would be an uncrystallised funds pension lump sum in respect of any of the benefits*

*It defines 'appropriate independent advice' as advice that is given by 'an authorised independent adviser'.*

*There's no requirement in the legislation for the 'member' to follow the advice provided. And shortly afterwards, where advice is defined, that definition doesn't include an obligation on the advice being followed.*

*COBS 19 sets out the various requirements which firms must comply with when advising on a pension transfer – and in particular, when deciding whether or not such a transfer is suitable for the client, and in his 'best interests'.*

*And COBS 19.1.10 says the following in relation to the statutory advice requirement:*

*'Where a firm has advised a retail client in relation to a pension transfer or pension conversion, and the firm is asked to confirm this for the purposes of section 48 of the Pension Schemes Act 2015, then the firm should provide such confirmation as soon as reasonably practicable.'*

*Based on the above, I'm not currently persuaded there's any requirement for Lighthouse to specifically advise on where Mr B is now intending to transfer his pension to, before it signs or provides confirmation for the purposes of section 48 of the Pension Schemes Act 2015 or COBS 19.1.10.*

*This isn't about the advice process itself. The requirements for that are clear. I'm not considering a complaint about whether Lighthouse has suitably advised Mr B. I'm also not considering whether it's suitable or in Mr B's best interests for him to transfer from these particular plans to a SIPP. All I'm considering here is whether Mr B obtained appropriate independent advice, from an authorised independent adviser. If Lighthouse accepts that it has provided this advice to Mr B, then in my view it would be fair and reasonable for it to provide confirmation of that, in line with COBS 19.1.10, without any further delay.*

*If on the other hand it no longer considers that what it gave is appropriate independent advice, and for this reason it considers it's unable to provide this confirmation, then the question becomes how to put things right for Mr B. Because I don't consider Mr B's decision not to follow Lighthouse's advice to mean that the advice it provided to him should no longer be considered 'appropriate independent advice'. So if Mr B is now required to obtain such advice elsewhere, I don't think it's fair that he should be out of pocket.*

*I don't think it would be reasonable to direct Lighthouse to confirm it has provided appropriate independent advice if it doesn't consider it has done so.*

*Therefore, in order to put matters right, I think Lighthouse should refund Mr B the advice fee he paid. Mr B has said that this was £970. And it should add 8% interest on that sum from the moment he paid it to the date of my final decision.*

*And I think that Mr B has been put through a considerable amount of trouble and upset as a result of Lighthouse not confirming it provided appropriate independent advice to him. And for this I consider an award of £500 to be fair and reasonable.*

Mr B didn't fully agree with my provisional findings, and Lighthouse didn't agree. Mr B thought that he should be entitled to the loss of interest from the investments he would've made had Lighthouse signed the relevant form.

Lighthouse made some factual comments around the background to the decision (in particular the agreed fee for the report). In relation to my findings it said:

*In relation to the various legislation on this matter, you refer again to Section 48 of the Pension Schemes Act 2015. Lighthouse does not disagree with you that, take in isolation, Lighthouse has indeed provided appropriate independent advice to Mr B so that he might affect the transfer of his two pension plans.*

However, it said that my findings directly contradicted what had been subsequently published by the FCA:

*Consultation Paper 18/7 (issued in July 2018):*

- *A potential transfer cannot be properly assessed without taking account of where funds would be transferred. This should be done regardless of whether separate advice is being given on those investments by the same or a different adviser.*
- *When advising on a pension transfer the advice must take account of the proposed destination of the transfer funds if a transfer proceeded (COBS 19.1.2BR). This includes both the proposed scheme and the proposed investments in that scheme.*
- *A Pension Transfer Specialist cannot know if a transfer will be suitable without understanding the implications of the destination for the transferred funds.*

**COBS 19.1.2:**

*To prepare a comparison, a firm must:*

- (1) Compare the benefits likely (on reasonable assumptions) to be paid under the ceding arrangement with the benefits afforded by the proposed arrangement;*
- (2) Ensuring that that comparison includes enough information for the retail client to be able to make an informed decision;*

**COBS 19.1.3:**

*In particular, the comparison should*

- (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.*

It said that it considered it *'did provide appropriate independent advice'* but not in respect of transfers to H. And so *'to sign the forms for Mr B without completing a new report would put the adviser and Lighthouse in breach of FCA rules, specifically COBS 19.1.1, 19.1.2 and 19.1.3 and gone against FCA guidelines and rules issued in 2017 and 2018'*.

It said that in its view, the key dispute wasn't that Lighthouse was failing to comply with legislation, but that Mr B was trying to avoid Lighthouse's implementation fee or a fee for a second report.

It disagreed that it should refund the fee for the report to Mr B. And it disagreed with my award for trouble and upset, on the basis that it said it was Mr B who had caused himself the trouble and upset and not Lighthouse's actions.

### **my findings**

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've given Lighthouse's comments a great deal of thought. I'm not persuaded it has addressed the findings I made in my provisional decision. It has explained in more detail Mr B's relationship with Lighthouse – but I'm not satisfied that makes any difference to the current complaint. And it has repeated the arguments it has used throughout this complaint, without addressing the two key points I made in my provisional decision. These were that, at the time Mr B was being advised in 2017:

- (a) The legislation defined appropriate independent advice as advice that is given by an authorised independent adviser. And there's no requirement in the legislation for the 'member' to follow the advice provided. Where advice is defined, the definition doesn't include an obligation on that advice being followed.
- (b) And COBS 19.1.10 said clearly that: *'where a firm has advised a retail client in relation to a pension transfer or pension conversion, and the firm is asked to confirm this for the purposes of section 48 of the Pension Schemes Act 2015, then the firm should provide such confirmation as soon as reasonably practicable.'*

This isn't about what is right for Mr B, or whether its advice was suitable – and all the rules and guidance which Lighthouse has quoted are about how to ensure the advice is suitable. Several of these rules were, in any event, expanded upon by the FCA on 1 April 2018 (or are due to be expanded on further after the FCA's current consultation is complete). But even the rules as they currently stand focus on the *suitability* of transferring to the destination scheme which is in contemplation at the time the advice is given. That was also the case in 2017.

And I would add that the only material thing which Mr B didn't want to accept is the SIPP provider Lighthouse recommended because it was more expensive than an alternative he'd found – there wasn't even a real disagreement about the investments themselves.

If I were to accept Lighthouse's argument, I'd be accepting the logical consequence which is that a consumer who receives 'appropriate independent advice' from a regulated firm to transfer from a defined benefit scheme to a personal pension, cannot do so unless:

- (a) he chooses to accept the advice he receives or
- (b) he chooses to pay the same or another firm for further advice.

Lighthouse has said it could've provided another report and considered a transfer to H – naturally for another fee. But should a consumer pay twice for advice, just because he chooses not to accept the original report – and in fact would rather accept the consequences himself of transferring to a different provider? What if Lighthouse produced a second report which Mr B didn't accept? Following Lighthouse's arguments that would've left Mr B with the need to obtain yet more advice until such time as he obtained advice he chose to follow. And then, and only then according to Lighthouse, could he obtain the relevant declaration that he had obtained 'appropriate independent advice'.

I can find no law, regulation or guidance that suggests that a consumer must go to these lengths before being able to transfer their pension. The law only says that advice has to be given, not followed. And Mr B has found a lower cost provider that's willing to accept his business without requiring it to be submitted through an adviser. He does however require the declaration from Lighthouse in order to release the funds from P and F.

And I think in this case, it's very clear that while Mr B would like to avoid the implementation fee because he didn't want to transfer to A's SIPP, Lighthouse is very keen that he doesn't.

My role isn't to decide what Lighthouse's fee structure should be. But I would expect that the possibility that a client might not want to go ahead with the recommendation was something to have been taken into account by Lighthouse in deciding what the advice fee would be relative to the implementation fee. My role is to decide whether it's fair and reasonable, in all the circumstances, for Lighthouse to charge Mr B the advice fee yet still decline to confirm that it provided him with appropriate independent advice.

For the reasons I explained in my provisional decision, and in this final decision, I'm satisfied it isn't. And I consider that Mr B has lost out and has been caused trouble and upset for which he should be compensated.

*putting things right*

Mr B has said that he is now obtaining advice elsewhere. And he has asked that I consider the loss of investment return from the investments he would've been able to make had Lighthouse provided the appropriate confirmation at the time.

I've considered how to put things right for Mr B very carefully. Given the particular circumstances of this case, I'm not persuaded requiring Lighthouse to compensate him for the loss of investment return would be fair. Mr B has remained invested in schemes which provide him with guaranteed benefits – so he's not been exposed to any market risk during this time. And while, as I explain below, I don't agree Lighthouse should keep the advice fee and still decline to sign the relevant forms, Mr B could've sought advice elsewhere while he pursued his complaint against Lighthouse. This would've potentially allowed him to mitigate any loss of return he is now claiming he has suffered.

I'm also not persuaded it would be possible to fairly calculate this loss of return given the number of variables which could've affected when Mr B would've been in a position to invest through his SIPP – for example how quickly P and F would've actioned the transfer requests (even if Lighthouse had provided prompt confirmation that it had provided appropriate independent advice), how quickly the money would've been transferred to Mr B's chosen SIPP and precisely when Mr B would've actually invested in the relevant funds.

However, I do agree that Mr B has suffered a loss for which he should be compensated. I don't think it's fair that Mr B should have to pay twice for 'appropriate independent advice', purely because Lighthouse refuses to confirm it has done so for the purposes of his transfer. So as Lighthouse maintains that it doesn't think it can sign the relevant forms and declaration, then in my view it's fair that he should be refunded the £970 he paid for the advice plus 8% interest per year simple on the sum from the moment he paid it to the date of settlement.

And I consider that Mr B has been caused trouble and upset – including the uncertainty around the return he might've been able to make on his pension if he had been able to invest it through his SIPP earlier. Lighthouse has said that Mr B has 'single-handedly' caused himself the trouble and upset, and therefore it shouldn't have to compensate him for that. I don't agree. In my view Lighthouse's refusal to provide the relevant confirmation or refund him the advice fee has meant that Mr B has been inconvenienced in doing what he wanted to do with his pension funds and – ultimately – has now had to seek advice elsewhere. I think this, and the amount of correspondence between him and Lighthouse about this issue, has caused him considerable trouble and upset. And for that, I consider an award of £500 to be fair and reasonable.

### **my final decision**

My final decision is that I uphold Mr B's complaint. I understand Mr B has paid the £970 advice fee. So my decision is that Lighthouse Advisory Services Limited must pay Mr B £970 plus 8% per year simple interest from the date he paid for the advice to the date of settlement. If Mr P has not paid the £970 fee, then Lighthouse Advisory Services Limited should treat that sum as no longer being due.

And Lighthouse Advisory Services Limited must pay Mr B £500 for the trouble and upset it has caused him.

Lighthouse Advisory Services Limited must pay the compensation outlined above within 28 days of when we tell it Mr B has accepted this final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 18 November 2018.

Alessandro Pulzone  
**ombudsman**