Financial Ombudsman Service

complaint

Mrs C complains, with the help of her solicitors and through her attorney Mrs B, that Lighthouse Advisory Services Limited (previously Temple Financial Planning Limited) gave her unsuitable advice to take out an Equity Release Mortgage (ERM) and invest in a Discounted Gift Trust (DGT).

background

Mrs C contacted an investment adviser for Lighthouse in 2004 because she was due to receive an inheritance. The investment adviser wrote to her in July 2004 and noted that she was going to split the inheritance five ways - between her and her four children. He also noted she intended to make house improvements and visit family abroad with some of the money from her portion of the inheritance. He advised her to invest the balance - which at that time wasn't known - in a DGT. He asked Mrs C to come back to him when she knew how much was available for this.

Mrs C came back to the adviser in 2005 confirming she had £20,000 left to invest. She met with the adviser on 7 June 2005 and he wrote to her after the meeting setting out his advice that she invest £50,000 in a DGT so that she could obtain some additional income whilst mitigating her potential IHT liability. This included the proceeds from three underperforming with-profit bonds the adviser thought she should cash in. However, he noted that at the time she didn't want to lose control of her money so didn't want to use a DGT.

His advice changed soon afterwards as shown in a further letter sent to Mrs C in August 2005 in which he set out his advice that Mrs C invest a total of £150,000 in a DGT. The increase in the amount to be invested was from equity release which the investment adviser recommended for IHT mitigation.

Mrs C was referred by the investment adviser to a colleague to provide advice about the equity release who advised that she take out £97,500 by way of an ERM - being the maximum she could take out. She then invested £150,000 in the DGT in accordance with the advice she had been given by the investment adviser.

I issued a provisional decision on the complaint upholding it. A copy of the provisional decision is attached and forms part of this final decision. In short, I made the following findings:

- I am not persuaded that Mrs C's finances were such that she needed equity release to provide additional income or for capital expenditure.
- I am not satisfied that equity release was a suitable recommendation for IHT mitigation given the risk of making the estate worse off and where there were other options.
- The only meeting the evidence shows took place made no mention of equity release for IHT mitigation so it's unclear how the investment adviser ended up recommending it for this purpose.
- There was no suggestion in the June 2005 meeting that Mrs C needed to invest more than £50,000 to provide an additional income.
- The investment adviser did mention equity release but only if the need arose in relation to future care needs.

- There is no evidence of a meeting after the one on 7 June 2005 but on 4 July 2005 the investment adviser wrote and mentioned equity release for IHT mitigation for the first time.
- The investment adviser wrote on 28 July 2005, and the letter included calculations showing how Mrs C's estate would be better off if she took out the ERM.
- I think the letter of 28 July 2005 is unclear because:
    - The letter calculates the estate will be better off by £61,632 using the ERM but this is on the basis Mrs C would've done nothing if she didn't take out the ERM and there was no reason for the investment adviser to think she would do nothing.
    - The investment adviser should have compared the position of the estate with the ERM with its position if Mrs C had invested £50,000 in the DGT using existing money in line with the advice in June 2005.
    - The calculation is also misleading because it takes no account of the income coming back into the estate which potentially would just add to the estate and increase IHT - as a result of the ERM Mrs C had additional income of £7,500 each year, in addition to the £3,600 she already had above outgoings.
- There was some discussion of Mrs C selling her shares as the adviser refers to this and carried out a CGT calculation, and there was some benefit to her selling her shares and investing the proceeds in the DGT rather than use an ERM.
- Selling shares to the value of £97,500 and investing this in the DGT rather that use the ERM would have taken the same amount of money out of her estate initially and left her with the income from the shares.
- The potential CGT liability from sale of the shares was around £25,000 based on the investment adviser's calculations, but this is based on her selling all her shares not £97,500 worth.
- Given she didn't need to sell all her shares and could have carried out the sale over two tax tears she could have sold the shares without incurring a significant CGT liability.
- She appears to have sold her shares only a few months later, in October 2006, in any event so is unlikely to have been put off selling the shares and putting them in the DGT because of CGT.
- The letter of 28 July 2005 refers to the investment adviser discussing the figures in greater detail, which given the significant change in advice from June 2005 would be expected – but there is no evidence a further meeting took place.
- The information in the investment adviser's letter of 22 August 2005 wasn't fair or clear. He emphasised the IHT saving using the ERM putting the figure of £60,000 as a minimum saving in bold when this figure was misleading.
- The letter only referred to the disadvantages of the ERM on page 12 and the warnings being vague and insufficient.
- Lighthouse have accepted that the impact of the ERM was only referred to in general terms and didn't show how the rolled-up interest could impact her estate.
- Lighthouse has misunderstood the impact of the rolled-up interest because it has said the increase in the property value was more than the interest when this isn't the case.
- The reasons set out in the letter of 22 August 2005 for why Mrs C didn't use her preferred option of gifting for IHT mitigation don't make much sense because:
    - She didn't need an additional £7,500 in income.
    - Investing share sale proceeds instead of using the ERM was closer to her preferred option of gifting.

    - Retaining liquid assets to pay for future care needs makes little sense given the advice to use an ERM for this if necessary, which would have made more sense.
- The advice is further confused as the investment adviser appears to have made an application for a whole-of-life policy for £357,000 which was another way of providing IHT cover – although the cover was too much. But if a WOL policy was taken out this reinforces the view the ERM was unsuitable.

I said that Lighthouse should pay the interest on the ERM of £143,001 less the income from the shares to the value of £97,500 I thought Mrs C should have been advised to sell and invest in the DGT – up to sale of the shares in October 2006 - which I calculated at £1,643. I also said that Lighthouse should pay simple interest at 8% on the mortgage interest from the date this was paid to the date of settlement and pay £1,000 for the distress and inconvenience caused.

I gave both parties the opportunity of responding and providing further information. The solicitors for Mrs C responded and agreed with the provisional decision, including my calculation for the income from the shares to be deducted from the mortgage interest redress.

Lighthouse responded and asked for further evidence the shares were sold in 2006, how much for and that the proceeds were gifted to the children, invested or spent. It said that the loss calculation should include the sale of the shares as the children have had the benefit of these over the past 14 years.

Lighthouse said that if Mrs C had invested £97,500 in the DGT from her existing money rather than taken out the ERM she wouldn't have been able to gift the money to her children and that this shows the relevance to the loss. It also said that Mrs C has benefitted from the DGT advice as she survived seven years, so the money invested in the DGT is outside of her estate for IHT purposes. It said Mrs C and her family have also benefitted from the investment growth. It questioned why account hadn't been taken of; the returns on the funds received by the children; the IHT savings; the potential investment growth.

The solicitors for Mrs C pointed out that Lighthouse had provided evidence itself that the shares had been sold.

my findings

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

Lighthouse has made several points about the redress set out in my provisional decision which I have taken into account and will comment on. However, it has provided no substantive new argument that the advice to take out the ERM was suitable, it has simply said it doesn't agree with my findings that the advice was unsuitable. In the circumstances I have seen no evidence that would lead me to change my finding that the advice to take out the ERM was unsuitable.

Lighthouse asked for further information about the sale of sale of shares by Mrs C. The solicitors have pointed out that it already had information the shares were sold in 2006 and I am satisfied it is more likely than not this is what happened. Lighthouse has asked for further evidence as to what happened to the share sale proceeds. The solicitors have said - and I accept what they have said - that Mrs C only used the adviser from Lighthouse. Given it hasn't provided any evidence Mrs C reinvested any of the proceeds it is more likely than not she didn't do so. The solicitors have also said the children have confirmed they received gifts from Mrs C after the sale of the shares. In the circumstances, it is more likely than not Mrs C gifted a large part of the proceeds to her children.

Lighthouse has suggested various matters should have been taken into account by me in terms of redress.

Firstly, it has suggested returns made by the children when the proceeds from the share sale were gifted to them should be taken into account. I don't know if the children did invest the money that was gifted to them or simply spent it, but I don't think this is something I need to know. Whilst it is appropriate to deduct the return Mrs C received from the shares up to the point of sale – as the redress I have set out requires - the same doesn't apply to any returns her children may have received from investments they made after they were gifted money.

The children are not party to this complaint, and any returns they received is a benefit to them not Mrs C – the complainant. In the circumstances I'm not persuaded it would be appropriate to deduct returns Mrs C has not had the benefit of from the redress payable to her. Even if that wasn't the case, I'm not satisfied it would be appropriate or reasonable to delve into the finances of the children to try and work out what they had done with the money gifted to them and whether this had provided a return – even if they were willing to provide such information to me.

Secondly, Lighthouse has said that Mrs C has benefitted from the advice because the money invested in the DGT is outside of her estate for IHT purposes. But if she had invested the same amount by selling her shares and investing the proceeds in the DGT she would have had the same benefit in any event.

There was some potential additional IHT benefit at the time of advice resulting from her having to repay the mortgage and interest. But as matters stand her whole estate is now likely to be free of IHT as a result of the increase to the threshold to £325,000 and the ability to transfer and use her late husband's unused nil-rate band in addition to her own. Even if that wasn't the case, she has ongoing care needs which are likely to reduce her estate in any event. In the circumstances there are no identifiable 'IHT savings' resulting from the advice.

Thirdly, Lighthouse has asked why account hasn't been taken of the investment growth on the DGT. The answer to that is that I have found Mrs C would have invested the same amount if she had used the shares to invest – so her investment growth would have been the same.

Finally, Lighthouse has suggested that the interest award at 8% is punitive. It should be aware that this is the rate we normally apply where a loss has crystalized, and I can see no reason to depart from this. It isn't based on what return might be achieved if the money was invested.

What Lighthouse should do to put things right.

If Mrs C hadn't been advised to take out the ERM she wouldn't have had a mortgage and been liable for the interest payable on that mortgage. The starting point for redress is therefore repayment of the mortgage interest on the ERM amounting to £143,001.

If Mrs C had sold her shares to the value of £97,500 to invest in the DGT she would not have had the benefit of the income from those shares, so it is appropriate that this income be deducted from the mortgage interest.

To simplify matters I have carried out my own calculations regarding this on the basis Mrs C had the benefit of these shares between March 2006 and October 2006. I have taken account of the likely number of shares Mrs C would've had to sell to achieve £97,500 based on an exchange rate for Canadian Dollars (CD) and GBP of around 0.5CD and the dividends payable in April 2006 and July 2006.

Based on what I have looked at the amount of income Mrs C would've received between March 2006 and October 2006 on shares sold to the value of £97,500 would have been around £1,643. I am not saying this is the amount Mrs C did receive, but I think it is reasonable to use this figure to keep things simple, subject to either party providing evidence the figure is likely to be significantly different from what I have calculated.

I also think Lighthouse should pay simple interest of 8% per annum on the mortgage interest payment of £143,001, from the date this was paid by Mrs C to the date of settlement - on the basis that this is money that she would otherwise have had available to her.

In addition, Lighthouse also must pay £1,000 for the distress and inconvenience arising from its unsuitable advice.

my final decision

I uphold this complaint for the reasons I have explained. Lighthouse Advisory Services Limited must pay the redress I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B on behalf of Mrs C to accept or reject my decision before 15 March 2021.

Philip Gibbons
ombudsman

COPY PROVISIONAL DECISION

complaint

Mrs C complains, with the help of her solicitors, that Lighthouse Advisory Services Limited (previously Temple Financial Planning Limited) gave her unsuitable advice to take out an Equity Release Mortgage (ERM) and invest in a Discounted Gift Trust (DGT).

background

Mrs C contacted an investment adviser for Lighthouse in 2004 because she was due to receive an inheritance. The investment adviser wrote to her in July 2004 and noted that she was going to split the inheritance five ways - between her and her four children. He also noted she intended to make house improvements and visit family abroad with some of the money from her portion of the inheritance. He advised her to invest the balance - which at that time wasn't known - in a DGT. He asked Mrs C to come back to him when she knew how much was available for this.

Mrs C came back to the adviser in 2005 confirming she had £20,000 left to invest. She met with the adviser on 7 June 2005 and he wrote to her after the meeting setting out his advice that she invest £50,000 in a DGT so that she could obtain some additional income whilst mitigating her potential IHT liability. This included the proceeds from three underperforming with-profit bonds the adviser thought she should cash in. However, he noted that at the time she didn't want to lose control of her money so didn't want to use a DGT.

His advice changed soon afterwards as shown in a further letter sent to Mrs C in August 2005 in which he set out his advice that Mrs C invest a total of £150,000 in a DGT. The increase in the amount to be invested was from equity release which the investment adviser recommended for IHT mitigation.

Mrs C was referred by the investment adviser to a colleague to provide advice about the equity release who advised that she take out £97,500 by way of an ERM - being the maximum she could take out. She then invested £150,000 in the DGT in accordance with the advice she had been given by the investment adviser.

Lighthouse provided a final response to the complaint in which it said that both the advice about the ERM and the advice about the DGT was suitable and that Mrs C was aware of the terms of the ERM, including that interest would accrue for the lifetime of the loan, so that she was in an informed position. It said that the DGT was appropriate as it provided an immediate saving on IHT and a further potential savings if she survived seven years, together with providing her with an income for life.

One of our investigators considered the complaint and thought that the advice to invest in the DGT was suitable given Mrs C's potential IHT liability. But he didn't think she needed to borrow to invest in the DGT so thought the advice to take out the ERM was unsuitable. He said that if Mrs C had used existing capital to invest in the DGT she would've been left with only around £79,000 in her estate that would be subject to IHT - an IHT liability of only around £29,000. He also set out other options Mrs C could've used to further reduce her potential IHT liability and noted that the IHT threshold was likely to rise in the future and thought this was something the investment adviser hadn't taken account of.

The investigator said Lighthouse should pay redress based on repayment of the interest on the ERM less the amount Mrs C made on the money she kept that would've been paid into the DGT if she had been properly advised.

Lighthouse didn't agree with the investigator. It noted his agreement that Mrs C wanted IHT advice and to increase her income and that the DGT was suitable. It pointed out that the suitability report explained about the compound interest and that Mrs C signed the borrower confirmation form confirming she understood the implications of equity release. Lighthouse also said that Mrs C was advised to consult with solicitors and would've received annual statements showing the amount owing increasing year on year.

Lighthouse said that the possibility of using her existing funds to fund the DGT had been considered by the adviser and is referred to in the suitability report. It said the reason Mrs C didn't want to do this was because she wanted to maintain her current level of income and wanted to retain liquid assets to fund fees for long term care – which is shown in the fact find as her second highest priority.

It didn't agree that Mrs C had enough to fund the DGT without the ERM as she wanted to retain £54,000 of money held on deposit as an emergency fund and so only had around £70,000 available to invest leaving a shortfall of £80,000. It said that Mrs C would've had a Capital Gains Tax (CGT) liability if she cashed in more than £8,492 of her Royal Bank of Canada shares. Lighthouse also said that other options for reducing IHT were discussed.

Lighthouse acknowledged that the suitability report described the effects of the equity release to the client's estate only in general terms and didn't provide a comparison of the impact of rolled up interest and the effect this would have on Mrs C's assets and the resultant fund available to her family.

It said Mrs C had sold the house in 2019 for £325,000 as against its value of £263,800 in 2005 an increase of 23.2% which it said was substantially more than the interest charged on the loan. It said the DGT had met its objective as Mrs C has made an IHT saving of about £60,000. It said there have only been four increases in the IHT threshold since 2005 and it has been the same figure for around 11 years and that advisers can only advise on what is known at the time.

Lighthouse did make an offer totalling just over £25,000 to include the £1,000 trouble and upset award the investigator had made. However, this wasn't accepted by Mrs C.

The solicitors for Mrs C also didn't agree with the investigator. They provided evidence that Mrs C had sold most of her Royal Bank of Canada shares in 2006. They said that as Mrs C had no material investments over the period in question (2006 -2019) her loss from having taken out the ERM was the interest paid on the ERM of £143,001.

The solicitors also argued that the DGT was unsuitable for various reasons but in the main because she didn't need the income but did have a potential need for the capital that was invested to fund future care needs. They said redress wasn't a financial loss as such but the lack of access to that capital. They acknowledge the DGT can't be unwound but argued that Lighthouse should pay the difference between the interest payable for the ERM of £143,001 and the maximum we were able to award of £150,000 in compensation for Mrs C not being able to access her funds when she needed to.

The investigator provided a response to the parties in which he stood by his findings that the ERM was unsuitable but the DGT was suitable. However, although he thought redress should include deducting the return Mrs C made on her shares, he thought the period over which this should be calculated should be March 2006 and October 2006 - when most of the shares were sold – rather than between March 2006 and repayment of the ERM in 2019 as he had originally stated.

Lighthouse provided a further response largely repeating points it had made previously about the suitability of both the ERM and DGT. It noted that the investigator hadn't commented on the CGT liability arising if Mrs C cashed in her shares to fund the DGT.

The solicitors responded and asked for a calculation to be provided showing what redress would be payable to Mrs C based on the investigator's revised redress.

As the parties didn't agree with the investigator the matter has been referred to me for review.

my provisional findings

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

Having taken account of all the information the parties have provided I'm not satisfied that the advice to take equity release and to invest the proceeds in the DGT was suitable.

I'm not persuaded that Mrs C's finances at the time of advice in 2005 were such that she needed equity release to provide an additional income or for capital expenditure. And although there was a potential IHT saving using the ERM I'm not satisfied it was suitable just for that purpose, given the risk of making the estate worse off and where there were other options that Mrs C could use to help reduce her IHT.

It is also far from clear how the adviser ended up advising Mrs C to use equity release for IHT mitigation given there is nothing to indicate this was discussed in the meeting on 7 June 2005 - the only meeting there is evidence took place.

The advice set out in the suitability letter sent after the meeting in June 2005 was to invest £50,000 in a DGT – from money Mrs C already had available. This showed that she would've had additional monthly income of £187.50 (£2,250 each year). This level of additional income seems reasonable in the circumstances, given she already had £300 available, after outgoings, each month (£3,600 each year) from her existing income as shown in the fact find. It seems to me this would allow Mrs C to potentially make use of the annual £3000 IHT gift allowance.

There was no suggestion in June 2005 that she needed to invest more than £50,000 because she needed more additional income. There was mention of equity release, but this was referred to as something Mrs C could do if the need arose in the future, so that she could purchase a care annuity to help pay for long-term care costs. It had nothing to do with IHT mitigation.

I have seen no evidence of a subsequent meeting between Mrs C and the investment adviser. But on 4 July 2005 the adviser wrote to Mrs C about various matters including, for the first time, using equity release for IHT mitigation. The letter states that such an arrangement would not only save IHT but would provide additional income which would be important if she sold the shares as these would no longer provide an income.

In that letter the investment adviser also refers to getting a valuation of Mrs C's shares so he could carry out a CGT calculation - which he said he thought would be considerably less than the £40,000 IHT that would be payable on them.

The letter of 4 July 2005 was followed by a further letter from the investment adviser on 28 July 2005 in which he set out the amount that Mrs C's family would receive on her death with the ERM as against what she would get without it. I think this letter is unclear for a couple of reasons.

Firstly, the calculation sets out Mrs H's IHT saving if she takes out the ERM and compares this to her position if she did nothing at all and states there is a saving of £61,632. But I'm not satisfied this is the right comparison, as there is nothing to suggest that Mrs C would've done nothing at all if she hadn't taken out the ERM.

The original advice of June 2005 was to invest £50,000 through a DGT. There was no reason for the investment adviser to think at the time of writing on 28 July 2005 that Mrs C wouldn't have been willing to invest at least the amount he originally advised her to invest of around £50,000 from her existing funds - especially given his calculation assumes she would invest that amount if she took out the ERM anyway.

In the circumstances the investment adviser should've calculated any benefit of using equity release by comparing the potential IHT payable based on investing the original amount of £50,000, as per his original advice to Mrs C, as against the position with her investing both this money and the money from the ERM. If he had done so this would've shown a saving of only £41,632 from using the ERM, not the £61,632 he set out to Mrs C.

Secondly, the letter shows a balance payable to the family of £582,651 with the ERM, as against £420,099 without. This latter figure would obviously have been higher if the investment adviser had done the comparison that I have said he should've done. But more importantly, whether the family would be better off overall with the ERM is totally dependent on Mrs C's house increasing in value, to offset the accruing interest on the ERM.

The main purpose of IHT mitigation is to try and ensure that your family (or other beneficiaries) get as much as possible from your estate when you die. In the circumstances, where the recommendation put forward to achieve this has the potential to make the family worse off I think it is reasonable to expect this to be specifically drawn to the client's attention.

Instead the investment adviser highlights the IHT saving in bold and then goes on to simply say that the figures are dependent on Mrs C living seven years and the increase in property value being equal to the interest on the ERM. He doesn't say that if the increase in property value doesn't keep pace with the interest Mrs C's family could be worse off because of the ERM.

I also think his figure for the IHT saving is potentially misleading for another reason, because it takes no account of the additional income generated by the DGT. The advice from the investment adviser meant that Mrs C had an additional £7,500 each year on top of the £3,600 she already had available after deduction of outgoings. There is nothing to suggest that Mrs C needed over £11,000 after outgoings each year, and any money she didn't spend or gift by way of the annual IHT allowance would simply be added back into her estate and been subject to IHT.

There was clearly some discussion about Mrs C selling her shares and the proceeds going outside of Mrs C's estate, given the investment adviser referred to a valuation for CGT purposes in his letter of 4 July 2005 and carried out a calculation dated 29 July 2005. The investment adviser also made reference to the importance of the additional income from the ERM if she sold her shares. But he made no suggestion that if Mrs C was going to sell her shares the proceeds could then be reinvested in the DGT so that she didn't lose any income.

There were various benefits of her selling shares to invest in the DGT. Firstly, this would've reduced her overall estate by the value sold and invested. Secondly, as the shares were income producing her overall additional income from investing in the DGT – if she invested the same amount – would be less, so there would be less risk of her simply adding money back into her estate through her income.

If Mrs C had done this, she would've reduced her estate by the amount invested in the DGT. So, if she had sold shares to the same value as the ERM (£97,500) and put the proceeds into the DGT this would no longer have formed part of her estate. In terms of IHT the effect would be the same as using the ERM, as she would have taken the same amount out of her estate.

There was obviously a potential CGT liability on her selling shares as indicated in the letter of 5 July 2005. The adviser's calculation of 29 July 2005 shows gains chargeable to CGT on the full shareholding were £62,844 after deduction of the CGT allowance of £8,500. On that basis Mrs C's CGT would've been about £25,000 by my calculations.

However, this figure is based on her selling all her shares when she only needed to sell shares to the value of £97,500. So, her chargeable gains would've been about a third less than the adviser's calculation. She could also have made the sale over two tax years, which would've further significantly reduced the tax payable – given she didn't invest until March 2006, just before the start of a new tax year and could've delayed her investment by a month.

In the circumstances it seems to me she could've sold her shares to provide the lump sum she needed to invest in the DGT without incurring a significant CGT liability. It also appears that she did sell most of her shares in October 2006, only a few months later, and will have incurred a CGT liability at that time. So, it is unlikely she would've been put off from selling shares to invest in the DGT because of any CGT liability if the investment adviser had recommended this.

The letter of 28 July 2005 states that the investment adviser would discuss the figures in greater detail when he next met with Mrs C. Given the significant change in advice from June 2005 and the importance of Mrs C properly understanding the benefits and downsides of using equity release for IHT mitigation such a meeting should've taken place. However, I have been provided with no evidence of a further meeting.

The investment adviser's subsequent letter of 22 August 2005 - in which the he set out his recommendation that Mrs C mitigate her potential IHT liability by taking out an ERM and investing this in the DGT - refers only to the meeting in June 2005, not some later meeting.

In that letter the investment adviser states that he is referring Mrs C to a mortgage adviser colleague regarding the advice to invest around £100,000 by way of equity release. But the mortgage adviser had already met with Mrs C by this time, as shown by his suitability letter of 11 August 2005. This records that Mrs C's prime reason for raising money from the equity in her property is to mitigate IHT and the mortgage adviser advises her to take the maximum amount possible for this purpose - which was £97,500 based on 39% of the value of her house.

Turning back to the investment adviser's letter of 22 August 2005 I don't think the information provided in the letter was fair or clear. As with the letter of 28 July 2005 the investment adviser emphasised the IHT saving by putting in bold the figure of £60,000, which he said would be the minimum saving. I have already explained why I consider this figure is misleading. The letter also clearly indicates that Mrs C's estate would be better off by at least this amount by using the words 'minimum saving'.

The investment adviser did set out a list of disadvantages of his advice - on page 12 of his letter. This included a statement that if Mrs C didn't spend or gift the income it would accumulate in her estate and reduce the effectiveness. I think this warning is vague and insufficient when compared to the emphasis put on the 'minimum savings' she would make. As with the letter of 28 July 2005, there is no warning that Mrs C's family could be significantly worse off because of the ERM if house prices didn't keep pace with the interest.

Lighthouse have accepted that the impact of the ERM was only referred to in general terms in the suitability letter and that this didn't provide any information that showed how the rolled-up interest could impact of Mrs C's estate. It has referred to the Key Facts illustration showing the effect of compound interest and the requirement that Mrs C take legal advice. However, I'm not persuaded that these would necessarily have made Mrs C aware that the IT mitigation strategy of the investment adviser could make her family significantly worse off, contrary to her intention.

Given the significance of taking out the ERM I don't think it is good enough to talk about its impact in general terms. Mrs C had no need for the income from investment of the ERM. The main purpose of the ERM, as recorded by the mortgage adviser, was to reduce her IHT. This was so she could ensure her family got as much as possible from her estate. Given this she should've been provided with clear information about the risk that her family could be worse off as a result of the advice, and I'm not persuaded she was.

The way the investment provider explained matters to Mrs C in the correspondence gave a clear impression that her estate would benefit as a result of the advice to take out the ERM and invest in the DGT and equal emphasis was clearly not given about the potential downside.

I think it is also worth noting at this point that Lighthouse appears to have misunderstood the impact of the rolled up-interest as against the increase in value of the property. It has said the amount that Mrs C's property increased by between 2005 and when it was sold in 2019 was 23.3% and that this was substantially more than the interest charged on the loan.

However, the figure of 23.3% is the total increase in the value of property over the whole period, not the annual increase. If this is averaged over the 14 years in question it amounts to only a 1.66% increase in value each year. The interest payable on the ERM over the same period was 6.64% compounded every year. So, the amount of interest accrued far outweighs the increase in value in her property both in monetary terms and in percentage terms.

I think there are further issues with the advice the investment adviser provided in his letter. It states that Mrs C's preferred method of IHT mitigation is to transfer her liquid assets outside of her estate by way of gift.

The letter goes on to state that Mrs C wanted to keep the income from her portfolio and increase this if possible and have enough liquid funds available in addition to income should she need to fund long term care in the future. These are the reasons put forward for why she didn't use her preferred option of gifting her money. But I'm not persuaded these reasons make much sense in the circumstances.

Firstly, Mrs C didn't need an additional £7,500 in income, as I have already found. She could've sold her shares and invested the proceeds in the DGT to ensure she didn't lose any income whilst investing around £50,000 from her existing funds to provide the additional income she did need. I acknowledge that investing the share sale proceeds in the DGT wouldn't be an immediate gift as such, but her family would still have the benefit on her death. It is certainly closer to her preferred option for IHT mitigation than what the investment adviser recommended.

Secondly, I can't see why there was such focus on her retaining liquid assets to pay for possible long-term care needs in the future. The investment adviser had referred to her using equity release for that purpose in his letter of June 2005. He also repeats this in the letter of August 2005. This was despite advising Mrs C at the same time to use equity release to invest in the DGT, which significantly limited any future ability she had to use equity release to fund care needs.

If Mrs C was going to take out equity release it would've made more sense to do so to purchase a care annuity if the need arose at some point in the future rather than hold on to liquid assets to pay for potential care needs and use equity release to invest in the DGT. I say this for two reasons.

Firstly, the percentage amount she could borrow against the value of the house increased by 1% every year to a maximum of 55% (with the provider she was advised to use). So, she could get a greater proportion of her equity if she took out equity release in the future at the point she needed to pay for long-term care. It's also likely that the house would increase in value to some extent so the larger percentage would also be based on a larger amount of equity.

Secondly, she would only be paying interest on the equity release at some future date - at the time she needed long-term care if the need arose – rather than from 2005. I have seen nothing that explains why the adviser moved from suggesting equity release be used for future care needs to advise that this be used for IHT mitigation instead.

There is one further matter which confuses the overall picture of what happened in 2005 and calls into question the advice Mrs C was given. I have seen an application for a whole-of-life policy completed in October 2005 and sent by the investment adviser to the life company on 25 October 2005. This refers to Mrs C selling shares to the value of £8,500 every year to cover the premium. The death benefit on the application is £357,000.

Using a life assurance policy is an alternative way of mitigating potential IHT which is referred to by the investment adviser in his suitability letter of 22 August 2005, but not what the adviser recommended.

I have seen no evidence that shows why the investment adviser ended up making an application for life cover for Mrs C only a couple of months after his suitability letter of August 2005. As with the change in advice between his June 2005 suitability letter and his August 2005 suitability letter, there seems to be a lack of evidence which shows the basis of any subsequent advice about this.

I don't know why the investment adviser put in an application for the policy on 25 October 2005 – the day before Mrs C signed the Borrower Confirmation of Acceptance of Offer of the ERM. The life policy provided far in excess of the cover she needed for her potential IHT liability. If Mrs C was advised to take out this cover for IHT mitigation that advice appears to have also been unsuitable given the amount of cover.

From the information I have seen this first application wasn't accepted and application was sent to another life company in January 2006. It isn't clear from the information I have seen, whether the policy was incepted and if it was whether it was maintained. But I have seen an email from Mrs C dated in March 2006 in which she refers to selling shares to the value of £8,500 - this being the premium amount the investment adviser used to get quotes for cover from various life companies.

This suggests that a policy may have been taken out. If it was it reinforces my view that the ERM was unsuitable, as the life cover would've paid the IHT liability - although my finding that the ERM was unsuitable isn't dependent on this.

In summary I'm not persuaded that Mrs C was given clear, fair and not-misleading information about the ERM so she could make an informed decision whether this was something she wanted to take out for IHT mitigation. I'm not satisfied it was a suitable recommendation based on Mrs C's needs and circumstances.

Turning to the DGT itself, I am not persuaded that Mrs C shouldn't have been advised to invest in the DGT. She did have a potential IHT liability and using a DGT to help mitigate IHT is a recognised way of doing this. It is also recorded that she did want some additional income, although as I have made clear I don't think she needed as much as she got as a result of the advice she received. Mrs C may have been able to mitigate her IHT to some extent in other ways, but this doesn't make the DGT unsuitable.

What Lighthouse should do to put things right.

If Mrs C hadn't been advised to take out the ERM she wouldn't have had a mortgage and been liable for the interest payable on that mortgage. The starting point for redress is therefore repayment of the interest on the ERM amounting to £143,001.

If Mrs C had sold her shares to the value of £97,500 to invest in the DGT she would not have had the benefit of the income from those shares, so it is appropriate that this income be deducted from the mortgage interest.

To simplify matters I have carried out my own calculations regarding this on the basis Mrs C had the benefit of these shares between March 2006 and October 2006. I have taken account of the likely number of shares Mrs C would've had to sell to achieve £97,500 based on an exchange rate for Canadian Dollars (CD) and GBP of around 0.5CD and the dividends payable in April 2006 and July 2006.

Based on what I have looked at the amount of income Mrs C would've received between March 2006 and October 2006 on shares sold to the value of £97,500 would have been around £1,643. I am not saying this is the amount Mrs C did receive, but I think it is reasonable to use this figure to keep things simple, subject to either party providing evidence the figure is likely to be significantly different from what I have calculated.

I also think Lighthouse should pay simple interest of 8% per annum on the mortgage interest payment of £143,001, from the date this was paid by Mrs C to the date of settlement - on the basis that this is money that she would otherwise have had available to her.

In addition, Lighthouse also must pay £1,000 for the distress and inconvenience arising from its unsuitable advice.

my provisional decision

I uphold this complaint for the reasons I have explained. Lighthouse Advisory Services Limited must pay the redress I have set out above.
Philip Gibbons
ombudsman