

The complaint

Mr W complains about the advice given by Lighthouse Advisory Services Limited ('Lighthouse') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

Our Investigator thought the complaint should be upheld. But agreement wasn't reached about how to put things right for Mr W. The complaint was then passed to me.

I issued my provisional decision saying that Mr W's complaint should be upheld, and I concentrated on how I thought things should be put right for Mr W. A copy of the background to the complaint and my provisional findings are below in italics and form part of this final decision.

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

Mr W approached Lighthouse in September 2016 to discuss his pension and retirement needs. And he was concerned about the situation with the BSPS due to some of the reports in the media he had seen about the problems it was having with funding.

Lighthouse completed a fact-find to gather information about Mr W's circumstances and objectives. This showed that he was aged 55 and married with no financial dependents. Mr and Mrs W owned their own home and didn't have any debts. They had £76,000 on deposit. Mrs W was retired and received £800 a month from an occupational scheme. Mrs W had £40,000 in a cash ISA which I understand was tax-free cash from the occupational scheme.

Mr W had received a cash equivalent transfer value ('CETV') from the BSPS in September 2016. This showed that he had around 39 years' service. He was entitled to a pension of about £38,250 at the date of leaving the scheme. The CETV was about £581,200.

On 3 October 2016, Lighthouse advised Mr W to transfer his pension benefits into a personal pension and invest the proceeds in line with his attitude to risk. The suitability report said the reasons for this recommendation were that Mr W wanted to retire at age 57 and he wanted a net income of £1,200 a year. It said that Mr W should transfer now as if the scheme moved to the PPF he would be unable to access the benefits until his age 65. This would materially affect his retirement plans.

Mr W accepted the advice and made the transfer in December 2016. Mr W also took tax-free cash of about £145,000 from the new arrangement.

I understand that Mr W left his employer in 2018 and started to take contract work. In July 2019 Mr W again met with Lighthouse and the documentation produced at this time noted that his work contract had ended, and he intended to fully retire. He had been using his savings to supplement his income.

He still had the tax-free cash that he had withdrawn earlier. Going forward he wanted to draw an income of £2,000 a month from the personal pension, which he did do.

Mr W complained in March 2020 to Lighthouse about the suitability of the transfer advice as I've outlined above. In June 2020 Mr W's DB Transfer was subject to a Section 166 skilled person review under the Financial Services and Markets Act 2000. This found that the advice given to Mr W wasn't suitable for his circumstances. The review said that Lighthouse would make an offer of compensation.

Lighthouse, via the third party it used to conduct the review, calculated and offered compensation based on the regulators approved methodology at the time. But this offer was calculated using the assumption that Mr W had retired in 2016 when he took tax-free cash from the personal pension.

Mr W didn't accept the offer made as he said he hadn't retired in 2016. He said if he was advised to stay in the scheme, he wouldn't have accessed his benefits at this time. So, he thought this assumption in the compensation calculation was incorrect and would likely have reduced the amount that Lighthouse said it should pay.

Mr W referred his complaint to the Financial Ombudsman Service. An Investigator agreed that the advice was unsuitable for Mr W and she thought that the compensation offered wasn't right. Our Investigator thought that Mr W didn't retire in 2016 and so this was the wrong date to use for the crystallisation of his pension benefits. She also thought that Mr W wouldn't have drawn his pension benefits in 2019 as he had no pressing need to repay any debt and his income needs were modest. He already had a significant amount of cash he could use to provide an income. So, she thought that the correct retirement date to use was his age 65.

Lighthouse disagreed. It gave some background about the redress methodology it used and said that it was right that the calculation was made on an actual loss basis from the point of advice (in 2016) as Mr W withdrew a large amount of tax-free cash. It thought that it was reasonable to say that this is when he accessed his pension benefits. And he always intended to take his full pension benefits from around age 57 or 58, so he wouldn't have continued working to his age 65. It said it would be difficult to value the amount taken as tax-free cash as part of a loss assessment.

The Investigator wasn't persuaded to change their opinion, so both parties were informed that an Ombudsman would consider the complaint in due course.

After this the regulator developed, and now provides access to, a BPS-specific redress calculator. Both parties to the complaint have been informed that I'm likely to award compensation based on this. And Lighthouse has now confirmed that it would be prepared to do a loss calculation using this and pay any compensation that arises.

What I've provisionally decided – and why

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

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for business ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

Lighthouse has indicated that it thinks this complaint may not be within the jurisdiction of the Financial Ombudsman Service. Although it has raised no objections to calculating and paying compensation. I'll firstly say that I'm satisfied this is a complaint I can consider. Mr W has complained about the advice he received from Lighthouse to transfer his BPS benefits to a personal pension. This is a regulated activity. Mr W thinks this may have caused him a loss. Lighthouse has made Mr W an offer to put things right, and Mr W doesn't think this offer has been calculated correctly.

While it isn't in dispute that the advice was unsuitable, it is evident that this dispute is about what would've constituted suitable advice for Mr W at the time. And I can't consider this aspect of the complaint without determining how Lighthouse should put things right for Mr W. So, I'm satisfied that I can consider whether the way Lighthouse has offered to put things right for Mr W fairly compensates him for the unsuitable advice.

The skilled person review that I mentioned above found that the advice to transfer wasn't right for Mr W. So, as the suitability of the advice isn't in dispute, I will focus in this decision on the redress method, with a particular emphasis on when it is reasonable to assume that Mr W would have taken his pension benefits had he not been given advice to transfer away from his DB scheme.

The FCA has given some useful guidance about this in in DISP App 4. I've summarised the relevant guidance rather than reproduce it in full. But it is available here:

<https://www.handbook.fca.org.uk/handbook/DISP/App/4/3.html#D94>

In respect of which retirement date to use DISP APP 4.3.16 (R) says that the starting assumption should be the DB schemes normal retirement date, which in this case is 65.

DISP APP 4.3.17 (G) goes on to say that 'this presumption will be rebutted if it is more likely than not that the consumer or a beneficiary would have taken benefits from their [DB scheme] on an alternative date.' Then gives three examples of when it would have been reasonable to assume the consumer may have retired early, or late. These are in summary:

- The consumer had a 'considered plan' for taking retirement benefits early from their DB scheme.*
- Any information that the business subsequently gathered had that shows the consumer had plans to access their DC pension early (or late).*
- Any evidence that demonstrates that the consumer changed, or planned to change, their working pattern at a similar time to them taking regular benefits from their defined contribution DC scheme.*

Lastly DISP 4.3.18 (G) gives some examples of when the presumption that the consumer would have retired would not be rebutted. The relevant ones here are, again in summary:

- There is a risk the consumers intentions were influenced by the firm's non-compliant transfer advice.*
- A full withdrawal of tax-free cash when the consumer is still working, unless it was used for income, or the consumer was in financial difficulty or ill health.*

So, I don't agree with Lighthouse's view that the date Mr W took tax-free cash from his new pension arrangement should be the date when the loss should be crystallised. Lighthouse thought that Mr W taking this tax-free cash showed that he had effectively retired, but I don't think this is the case. I think he took this tax-free cash partly due to the non-compliant advice by Lighthouse and he was clearly still working with no need of the cash due to financial difficulty or ill health. And this is supported by subsequent events in that I understand Mr W didn't use the tax-free cash as an income and he did continue to work, albeit in different employment.

So, based on what I've seen of Mr W's circumstances, the full tax-free cash withdrawal at his age 55 isn't the right time to assume he retired for the purposes of a loss assessment.

Our Investigator thought that it should be assumed that Mr W would retire at his age 65. It looks likely that Mr W did have the means to not take his pension benefits until age 65. But the point-of-sale documentation from 2016 says that Mr W wanted to retire at age 57 which would be around 2018. And the advice he was given was to ensure his pension benefits didn't end up in an area where he couldn't retire early (such as if the BPS had problems going forward). I'm not persuaded that Mr W had sufficient other means such that he could've afforded to put off accessing his BPS benefits until age 65. So, I don't think 65 would be the right date to use in the loss assessment.

Mr W did want to retire early but I wouldn't go so far as to say that he had a 'considered plan' to do this when he was given advice in 2016. I don't think he had definitely decided, and seriously planned,

to retire at age 57, it was more that he wanted to cease work around this time. So, I don't think that using Mr W's age 57 as his assumed retirement date would be correct in the loss calculation.

In August 2019 Mr W again met with Lighthouse and its clear from the documentation produced at this time that he wanted to arrange his retirement. The suitability letter said that:

'Your main objective at this time is that as you would like to discuss accessing your pension in order to provide a regular income whilst your state pension benefits are not yet payable. This plan is already in a drawdown arrangement as you have previously accessed the full PCLS. You told me that since leaving [employer] you have been sub-contracting as a Project team member for [employer]. This project has now come to an end and you are retiring now. You have no plans to take on any further work at this time.' And Mr W did go on to start to draw an income.

So, I think this is a time when Mr W both changed his working pattern and took a regular income benefit from his new DC arrangement. I think it's likely he would also have done this from the DB scheme if he had remained in it. So, I think his age 58, is the correct date to assume he would have retired fully. I'm mindful that Mr W had savings, but he still chose to access his pension, so I think that's what he would've likely done if he'd remained in the DB scheme.

I'm assuming that Mr W would have remained in the DB scheme. And there were changes to this scheme in 2017 (that were implemented in 2018).

In May 2017, the PPF made the announcement that the terms of a Regulated Apportionment Arrangement ('RAA') had been agreed. That announcement said that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr W's employer would be set up – the BSPS2.

In October 2017, members of the BSPS were sent a 'Time to Choose' letter which gave them the options to either stay in the BSPS and move with it to the PPF, move to the BSPS2 or transfer their BSPS benefits elsewhere. The deadline to make their choice was 11 December (and was later extended to 22 December 2017).

So, Mr W would need to decide in 2017 if he wanted to join the new BSPS2 or remain in the BSPS and move with it to the PPF. I think when he was making this decision it would have been clear that the PPF offered the most generous early retirement options. And, by this time, I think it would have been clearer to him that he would be retiring early. Because of this I think Mr W would have chosen to join the PPF and so redress should be based on this.

Our Investigator thought that Mr W should be paid £500 for the distress and inconvenience the advice has caused him. But I think this is too high an amount.

Mr W hasn't indicated that that he felt a significant level of distress due to the advice. And he hasn't told us about any other impact the advice had on him at the time. That said it clearly would have caused him some concern when he realised that his retirement benefits may have been reduced due to the advice that Lighthouse gave. And this would have been at a time when he was concerned about the situation with his employer and the scheme in any event. Because of this I think £300 is reasonable compensation in the circumstances.

Developments

Lighthouse, and Mr W, received my provisional decision. Lighthouse didn't have anything to add after they'd seen it.

Mr W's representative didn't agree with using Mr W's age 58 as the time he took benefits in the loss assessment. It provided its original submissions on this issue which I had already considered. It said that Mr W had significant savings. So, it was a realistic option for him to use these savings, and any other means he had, to delay taking his pension benefits. And if he had been given proper advice at the time this is what he would have done. He'd also returned to work at times. Mr W says that he wouldn't have accessed his pension benefits at age 58 (or earlier).

As no agreement has been reached, I'm issuing my final decision.

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.

Leaving aside the poor advice to transfer, which is accepted, it was clear in 2016 that Mr W wanted to retire around his age 57. And it's also clear that he informed Lighthouse that he was retiring in 2019, at his age 58, and he had no further plans to work. He also started taking an income from his personal pension at this time.

I don't think that Lighthouse should have advised Mr W not to take his benefits in this situation. If he had the means to stop work, and start relying on pension provision, then it's reasonable to give advice on this basis. I don't think his decision to take his pension benefits at this time was a result of the advice he was given to transfer earlier.

Mr W's representative has said that he didn't need to take his benefits at age 58 and he could, perhaps, have found ways not to do this. For example, by using his savings. But this of course carries its own risks and Mr W had already been using his savings to supplement his income up to this point. So, he clearly did want to change this. Added to this Mr W started taking benefits from his personal arrangement, rather than using his savings. I think both of these factors demonstrate that Mr W didn't want to use his savings in this way.

And I don't think that this is altered by Mr W's return to work in November 2021. Mr W's representative has said this was contract work so it wouldn't be permanent. And there is a reasonable length of time between his decision to stop work 2019. So, I don't think that this has much bearing on his decision to take his pension benefits in 2019.

Overall, I still think it's more likely than not that Mr W would have taken benefits from his DB scheme at age 58 if he had not been given advice to transfer. And so, this is the right age to use in the compensation calculator.

I think Lighthouse should put things right in the way I outlined earlier, and which is set out below.

Putting things right

A fair and reasonable outcome would be for Lighthouse to put Mr W, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr W would most likely have remained in the occupational pension scheme and moved with it to the PPF if suitable advice had been given.

Lighthouse must therefore undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in policy statement PS22/13 and set out in the regulator's handbook in DISP App 4:
<https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter>.

Lighthouse should use the FCA's BSPS-specific redress calculator to calculate the redress. A copy of the BSPS calculator output should be sent to Mr W and the Financial Ombudsman Service upon completion of the calculation together with supporting evidence of what Lighthouse based the inputs into the calculator on.

For clarity, Mr W took benefits from the personal pension at age 58. So, compensation should be based on him taking benefits at this age.

This calculation should be carried out using the most recent financial assumptions in line with DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr W's acceptance of my final decision.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, Lighthouse should:

- calculate and offer Mr W redress as a cash lump sum payment,
- explain to Mr W before starting the redress calculation that:
 - his redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
 - a straightforward way to invest his redress prudently is to use it to augment his DC pension
- offer to calculate how much of any redress Mr W receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr W accepts Lighthouse's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr W for the calculation, even if he ultimately decides not to have any of his redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr W's end of year tax position.

Redress paid to Mr W as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, Lighthouse may make a notional deduction to cash lump sum payments to take account of tax that Mr W would otherwise pay on income from his pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr W's likely income tax rate in retirement – presumed to be 20%. So, making a notional deduction of 15% overall from the loss adequately reflects this.

Lighthouse should also pay Mr W £300 for the distress and inconvenience the poor advice caused him.

Where I uphold a complaint, I can award fair compensation of up to £160,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £160,000, I may recommend that the Lighthouse Advisory Services Limited pays the balance.

My final decision

Determination and money award: I uphold this complaint and require Lighthouse Advisory Services Limited to pay Mr W the compensation amount as set out in the steps above, up to a maximum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Lighthouse Advisory Services Limited pays Mr W the balance.

If Mr W accepts this decision, the money award becomes binding on Lighthouse Advisory Services Limited.

My recommendation would not be binding. Further, it's unlikely that Mr W can accept my decision and go to court to ask for the balance. Mr W may want to consider getting independent legal advice before deciding whether to accept any final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 12 January 2024.

Andy Burlinson
Ombudsman