DRN-3838806

## The complaint

Mr F complains that he was given unsuitable advice by Lighthouse Financial Advice Limited, an appointed representative of Lighthouse Advisory Services Limited ('Lighthouse') to transfer deferred benefits from his defined benefit (DB) pension with British Steel (BSPS) to a personal pension.

## What happened

In March 2016, Tata Steel UK Ltd announced that it would be examining options to restructure its business including decoupling the BSPS 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.

In May 2017, the Pension Protection Fund (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 F's employer would be set up – the BSPS 2.

In September 2017, Mr F met with Lighthouse for advice on his pension as he was concerned about the PPF and the security of his pension.

A fact find and risk profiler were completed which showed:

- Mr F was 54, married, he had two independent adult children and he was in good health. He earned around £59,400 per year and his wife around £121,200 which gave them a joint monthly net income of around £8,675.

- He and his wife owned their home worth £610,000. They had an outstanding mortgage of £460,000 with a remaining term of 15 years. Their monthly mortgage repayments were £2,900. They also had a yacht worth £200,000 and an emergency fund of £30,000.

- The couple's joint monthly outgoings were recorded as £5,000 per month and Mr F's individual monthly income required in retirement was recorded as £2,000. None of this included any detailed analysis.

- Mr F wanted to retire at 57. He was looking to pay off part of his mortgage with any tax-free cash. The rest of the mortgage could then be paid off by Mrs F's tax-free cash lump sum when she retired.

- Mr F was also a member of the new company defined contribution (DC) pension scheme with employer and employee contributions totalling 16%. Mrs F had her own generous DB pension.

- Mr F’s attitude to risk was recorded as lowest medium and Mr F said he could only tolerate small losses to his pension

A suitability report was subsequently issued which recommended Mr F to transfer his DB benefits to a personal pension. The reasons for doing so were recorded as:

- He could meet his objective of retiring at age 57
- It would meet his preference of being able to draw benefits flexibly and have control of his pension, including paying off a large part of his mortgage with a tax-free cash lump sum
- He would be able to receive his target income of £2,000 per month and enable him to take ad hoc sums when needed.
- It would provide potential lump sum death benefits which he preferred over a spouse’s pension

Mr F complained to Lighthouse in 2021 about the advice he received. He said it wasn’t suitable. Lighthouse rejected his complaint.

Mr F referred his complaint to this service and one of our investigators upheld his complaint. He agreed Lighthouse had given unsuitable advice.

Lighthouse disagreed and so the complaint was passed to me for a 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.

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. 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.

I’ve considered the very detailed submissions by both parties in full. However, I will focus on what I consider to be the most relevant points.

<u>The applicable rules, regulations and requirements</u>

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of Lighthouse’s actions here.

PRIN 6 : A firm must pay due regard to the interests of its customers and treat them fairly.

PRIN 7: A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

COBS 2.1.1R: A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule)

The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability.

The provisions in COBS 19 which specifically relate to a DB pension transfer.

COBS 19.1.2R required the following:

*"A firm must:*

*(1) compare the benefits likely (on reasonable assumptions) to be paid under a defined benefits pension scheme or other pension scheme with safeguarded benefits with the benefits afforded by a personal pension scheme, stakeholder pension scheme or other pension scheme with flexible benefits, before it advises a retail client to transfer out of a defined benefits pension scheme or other pension scheme with safeguarded benefits;*

*(2) ensure that that comparison includes enough information for the client to be able to make an informed decision;*

*(3) give the client a copy of the comparison, drawing the client's attention to the factors that do and do not support the firm's advice, in good time, and in any case no later than when the key features document is provided; and*

*(4) take reasonable steps to ensure that the client understands the firm's comparison and its advice."*

COBS 19.1.3 G

*"In particular, the comparison should:*

*(1) take into account all of the retail client's relevant circumstances;*

*(2) have regard to the benefits and options available under the ceding scheme and the effect of replacing them with the benefits and options under the proposed scheme;*

*(3) explain the assumptions on which it is based and the rates of return that would have to be achieved to replicate the benefits being given up;*

*(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; and*

*(5) where an immediate crystallisation of benefits is sought by the retail client prior to the ceding scheme's normal retirement age, compare the benefits available from crystallisation at normal retirement age under that scheme."*

Under the heading "Suitability", the following was set out:

COBS 19.1.6G:

*"When advising a retail client who is, or is eligible to be, a member of a defined benefits occupational pension scheme or other scheme with safeguarded benefits whether to transfer, convert or opt-out, a firm should start by assuming that a transfer, conversion or opt-out will not be suitable. A firm should only then consider a transfer, conversion or opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer, conversion or opt-out is in the client's best interests."*

COBS 19.1.7G:

*"When a firm advises a retail client on a pension transfer, pension conversion or pension opt-out, it should consider the client's attitude to risk including, where relevant, in relation to the rate of investment growth that would have to be achieved to replicate the benefits being*

*given up."*

COBS 19.1.7B:

*"In considering whether to make a personal recommendation, a firm should not regard a rate of return which may replicate the benefits being given up from the defined benefits pension scheme or other scheme with safeguarded benefits as sufficient in itself."*

COBS 19.1.8G:

*"When a firm prepares a suitability report it should include:*
*(1) a summary of the advantages and disadvantages of its personal recommendation;*
*(2) an analysis of the financial implications (if the recommendation is to opt-out); and*
*(3) a summary of any other material information."*

<u>Did Lighthouse take reasonable steps to ensure a DB transfer was suitable for Mr F?</u>

The regulator's guidance is that the starting assumption for a transfer from a DB scheme should be that it is unsuitable. A firm should have only considered a transfer if it could clearly demonstrate, on contemporary evidence, that the transfer was in Mr F's best interests. (COBS 19.1.6G). And having looked at all the evidence available, I'm not satisfied the advice to transfer was in Mr F's best interests. I'll explain why.

*financial viability*

The following benefits were available from the DB scheme when taking tax-free cash lump sum (TFC) as Mr F was intending to.

At age 57: TFC of £130,216 and a reduced annual pension of £19,532.
At age 65: TFC of £213,650 and a reduced annual pension of £32,047.

The transfer analysis showed that the investment return required to match the BSPS at retirement at age 57 (critical yield) was 13.18% if taken as a lump sum payment with a reduced pension. The equivalent critical yield to match the benefits in the PPF at 57 was 6.96%. The critical yields for the BSPS2 would have likely been between the ones for the PPF and the BSPS, but likely closer to the BSPS critical yield.

Lighthouse acknowledged in their suitability report that if Mr F's objective was to match or exceed his DB benefits, they would recommend him to remain in his DB scheme and take benefits at 65.

By transferring his pension it was highly likely Mr F would receive overall significantly lower benefits in retirement. So based on the above alone, a transfer wasn't in Mr F's best interest.

Of course financial viability isn't the only consideration when giving transfer advice. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I considered below whether such other reasons applied here.

*Income and flexibility*

Flexibility as a concept might sound attractive, but I can't see that Mr F had any concrete need for it or that his objectives in this regard could not be met from the DB scheme. It's clear from the documents I have seen that Mr F wanted to keep his option open about early retirement and if possible he wanted to retire at 57 or 58. Mr F says the information about his income requirements in retirement was wrong and that he and his wife were spending all of their joint income (over £8,000 a month). He also questioned other sections in the suitability report, for example that he would pay off some of his mortgage at age 57. He said they had a fixed mortgage rate and paying off such large amounts at age 57 would have incurred a penalty of £11,000.

I understand that Mr F now disputes some of the information and he might be right that the information recorded was incorrect. However, I would have expected him to read his suitability report at the time and raise any errors. The suitability report said:

*The advice given has been made taking into account your personal circumstances and objectives discussed at our initial meeting. Should any of the information provided be incomplete or inaccurate, it may impact on the advice given, therefore please notify me immediately should you believe any of the information to be inaccurate.*

I think Lighthouse was generally allowed to rely on the information given and trust any incorrect information would be pointed out by Mr F. However, I do note that no proper analysis was done how much money Mr F would actually need in retirement and what he expected his outgoings to be. And I think this was vital information in order to provide suitable advice.

Given the detailed information about how Mr F would pay off some of the mortgage and have Mrs F clear the rest with her lump sum when she retired, I think it's more likely than not this was discussed with Mr F. However, I don't think there was a need to pay off the mortgage as soon as possible. There is no indication that the mortgage payments were unaffordable and Mrs F who was the higher earner was intending to work until state retirement age.

Based on the income requirements Lighthouse was working to, Mr F could have achieved this by taking his DB benefits at 57 and use his tax-free cash lump sum to supplement his income until age 67 when his state pension would be paid, even to a point of his current income of £2,675. This still would have left him with a lump sum -albeit lower than in the personal pension-that he could have put towards his mortgage at any point. And he also had a defined contribution pension and savings that he was still paying into for a few more years which could have supplemented this.

So I think Mr F could have met his retirement objectives if he remained in the DB scheme without exposing his main pension provision to investment risk. And I think Mr F's existing benefits did provide some flexibility.

Lighthouse ran an income modeller which showed that if his personal pension achieved growth of 5% per year Mr F could take £2,000 per month (increasing with assumed inflation of 2.5%), reduce his income from state pension age and would not run out of funds before age 109.

However, the analysis depended on investment returns which weren't guaranteed and were above the returns Lighthouse thought were reasonably achievable given Mr F's attitude to risk (4.09%). I can't see that any stress testing, for example sustained poor performance in early years or the use of additional lump sums in early retirement were undertaken.

However, in any event, even if there was a reasonable chance Mr F would not run out of funds in his lifetime, I don't think this was reason enough for a transfer given that overall higher benefits could have been achieved in the DB scheme allowing Mr F to achieve his retirement objectives without taking on risk with his pension provisions.

*Death benefits*

Mrs F had her own pension provisions, however I still think a spouse's pension from Mr F's DB scheme would have been a valuable benefit. I don't think a preference for lump sum death benefits are sufficient reason to justify a transfer.

*concerns about financial stability of BSPS*

There is no doubt Mr F was concerned about his employer's financial situation and the uncertainty surrounding the BSPS.

Lots of his colleagues at the time were transferring out of the scheme and he was worried his pension would end up in the PPF. So I think it's likely Mr F was worried about the security of his pension which is why he wanted to take control of it.

However, it was Lighthouse's obligation to give Mr F an objective picture and recommend what was in his best interest. Mr F was particularly concerned about BSPS moving to the PPF. He was worried about the security of his pension and that he could lose some of it. However, even if this happened, Mr F was still likely to be better off not transferring. Also, his pension wasn't under his employer's control as he perceived it. It was independently controlled by trustees to protect members' interests. I can't see that this was properly explained to him or that Lighthouse did enough to alleviate Mr F's concerns in this regard.

*Skilled person review*

I recognise that the FCA required Lighthouse to appoint a Skilled Person under section 166 of the Financial Services and Markets Act (FSMA) to conduct a review of certain DB pension transfers advised on or arranged by Lighthouse ('the Skilled Person Review').

The Skilled Person who is independent from Lighthouse reviewed the advice given to Mr F in 2021 using the FCA's Defined Benefit Advice Assessment Tool ('DBAAT') and found the advice to have been suitable.

Lighthouse feels this hasn't been taken into account and that the DBAAT tool and methodology used by the regulator has been ignored.

I can assure Lighthouse that I have considered the skilled person's assessment and all the documents that were provided with it. The DBAAT tool is designed to help establish and guide users whether DB transfer advice was suitable in a specific case. In this case the suggested suitability rating was in fact "potentially unsuitable". The skilled person overall thought the advice was suitable and provided their reasoning which I have considered.

However, I'm considering this advice independently and I'm not bound by what the skilled person decided. As set out at the beginning of the decision I've taken into account COBS 9 and COBS 19 as well as the Principles, FCA rules and guidance and good industry practice.

And having done so I've reached a different outcome for the reasons set out above. This doesn't mean I used different considerations to the regulator. I simply don't agree with some of the answers the skilled person gave in the DBAAT tool and the ultimate outcome that was reached.

*summary*

It's possible that Mr F was attracted by the idea of transferring. He might have heard from colleagues that this is what they were doing and he was very concerned about the possibility of his pension falling to the PPF and him not being able to retire early. And I don't doubt that flexibility, control and lump sum death benefits would have also sounded like attractive features. But Lighthouse wasn't there to just transact what Mr F might have thought he wanted. The adviser's role was to really understand what Mr F needed and recommend what was in his best interest.

Mr F's concerns about the PPF and the security of his pension should have been put into perspective. If Lighthouse had recommended him to stay and explained their reasons properly why Mr F would likely be better off staying in his DB scheme, that he could retire early and meet his objectives and that going into the PPF wasn't as concerning as he thought, I think Mr F likely would have followed their advice. Mr F was also given the option to choose to move to a new scheme, the BSPS2, so there was a reasonable chance his pension wouldn't end up with the PPF anyway.

I don't think Lighthouse took reasonable steps to ensure their advice was suitable and in Mr F's best interest. There was no persuasive reason for him to give up guaranteed benefits and expose his pension to risk. They should have recommended him to remain in his DB scheme and opt to move to the BSPS2.

The BSPS2 wouldn't have decreased Mr F's initial entitlement by 10% like the PPF and some of his benefits would have had potentially higher increases in BSPS2. And Mr F was still a few years from his desired retirement age and so his plans could have still reasonably changed. And so I think he ought to have been advised to move to the BSPS2.

**Putting things right**

A fair and reasonable outcome would be for the business to put Mr F, as far as possible, into the position he would now be in but for the unsuitable advice he was given. I consider he would have remained a member of the BSPS and subsequently moved to the BSPS2. So calculations should be made on this assumption.

Lighthouse must 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.

Mr F took a lump sum of £100,000 from his pension. He said he used £37,000 to pay off some of his mortgage. He also changed his car and did some improvement works on the house. He said he later took the rest of his tax-free cash as he didn't want to leave it in the pension in case it dropped further. He says he hasn't spent the majority of it other than paying for his son's wedding. He is still working.

Based on what Mr F spent his tax free-cash on and the fact he is still working, I think it's likely he wouldn't have accessed his DB pension to release these funds as he did in his personal pension. So the default assumption for the retirement age of 65 should be used in the calculations.

Lighthouse should use the FCA's BSPS-specific redress calculator to calculate the redress. A copy of the BSPS calculator output plus any supporting documents should be sent to Mr F and the Financial Ombudsman upon completion of the calculation.

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 promptly following receipt of notification of Mr F'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 F redress as a cash lump sum payment
- explain to Mr F before starting the redress calculation that:
  -their 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 their redress prudently is to use it to augment his DC pension
- offer to calculate how much of any redress Mr F receives could be augmented rather than receiving it all as a cash lump sum
- if Mr F accepts Lighthouse's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr F 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 F's end of year tax position.

Redress paid to Mr F as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, Lighthouse may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr F'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.

Mr F says the matter has caused him worries and concerns, in particular when he saw his pension fund drop significantly during the Covid pandemic. The investigator recommended that Lighthouse should pay £350 to acknowledge this and I consider this reasonable in the circumstances.

**My final decision**

I uphold this complaint and require Lighthouse Advisory Services Limited to follow the instructions set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 26 January 2024.

Nina Walter
**Ombudsman**