

The complaint

Mr S complains that Lighthouse Advisory Services Limited ('Lighthouse') gave him unsuitable advice to transfer the benefits from his defined benefit (DB) occupational pension scheme to a personal pension but has not provided appropriate redress.

Professional representatives have helped Mr S to bring this complaint. But, for ease of reading I will refer to the representatives comments as being Mr S'.

Since the date of the advice another firm has acquired Lighthouse's business and responded to the complaint. But as it was Lighthouse that gave the advice I will only refer to it within this decision.

What happened

In March 2016, Mr S' employer announced that it would be examining options to restructure its business, including decoupling the BSPS (the employers' DB scheme) from the company.

The consultation with members referred to possible outcomes regarding their preserved benefits, which included transferring the scheme to the Pension Protection Fund ('PPF')¹, or a new defined-benefit scheme ('BSPS2'). Alternatively, members were informed they could transfer their benefits to a private pension arrangement.

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 G's employer would be set up – the BSPS2.

Around that time, May 2017, Mr S approached Lighthouse for advice. It conducted a fact-find with him. Amongst other things it noted that Mr S was 59 and married. He wanted to release £30,000 tax free cash (TFC) to use for home improvements. He was also planning to move to part-time work in the near future and wanted to take an income of £1,250 a month to support that move until his full retirement which he anticipated would be at age 62.

Lighthouse issued a suitability report which recommended that Mr S should transfer his DB scheme funds to a personal pension. Mr S accepted that recommendation and transferred around £602,000 into a personal pension. He also took some TFC.

Mr S didn't move to part-time work but over the following years he took some more TFC withdrawals, largely for home improvements and to pay off loans. In 2019 he told Lighthouse that he planned to reduce his overtime hours in work and his wife was no longer employed. To bolster their income, from September 2019 he began taking a regular sum of £1,000 a month from his personal pension.

¹ The PPF acts as a 'lifeboat' for insolvent DB pension schemes. It pays compensation to members of eligible schemes for their lifetime. The compensation levels are, generally, around 90% of the level of the original scheme's benefits for deferred pensions. But the PPF's rules and benefits may differ from the original scheme.

In 2020 Mr S complained to Lighthouse that its advice to transfer might not have been suitable for him. On 9 September 2020 Lighthouse replied. It said it couldn't fully demonstrate that a transfer was suitable for Mr S. It upheld his complaint and said it intended to make an offer of compensation.

Shortly after Mr S referred his complaint to the Financial Ombudsman Service. He said he was doing so in order to ensure he wasn't out of time to raise his complaint with this office and would allow negotiation to continue in the meantime. Other than registering his complaint we took no further action at that time

In 2022 Lighthouse wrote to Mr S. It said it had concluded its redress calculations, which showed Mr S wasn't entitled to any compensation. It said it had used the date Mr S first took a TFC payment in 2017 as his retirement date.

Mr S asked the Financial Ombudsman Service to look into his complaint. One of our Investigators did so. He didn't think Lighthouse had calculated redress fairly. He said that while Mr S had taken lump sum TFC payments for specific purposes, he didn't think that indicated he would have taken his DB benefits at those times had he remained in the scheme. But the Investigator thought it was fair for Lighthouse to use the date that Mr S started taking regular income payments from his personal pension as Mr S' retirement date for calculation purposes. The Investigator said that happened in February 2019. The Investigator also said that Lighthouse should pay Mr S £200 to address his distress and inconvenience because of the unsuitable advice.

Mr S replied pointing out that he hadn't begun taking regular income from his pension until September 2019.

Lighthouse also replied. It didn't agree with our Investigator's complaint assessment. It said that Mr S had benefitted from the TFC sums he'd taken from 2017 onwards. It also confirmed that Mr S had only begun withdrawing regular sums from his personal pension in September 2019.

Our Investigator wrote to the parties to confirm that any compensation should be calculated using Mr S' date of retirement in September 2019 when he began making regular pension withdrawals.

As no agreement was reached the complaint was referred for an Ombudsman's review.

In May 2023 while the complaint was awaiting an Ombudsman's attention, we wrote to the parties. We said the FCA had developed a BPS specific calculator for establishing redress for BPS cases. We advised that if an Ombudsman were to later uphold the complaint they may instruct Lighthouse to carry out another redress calculation using the FCA's BPS calculator.

In June 2023 Lighthouse said it had carried out a new redress calculation using the FCA's BPS calculator. It used September 2019 as Mr S' date of retirement. It said the calculation showed Mr S had not suffered a financial loss. But, as a goodwill gesture it offered Mr S £5,000 to settle the matter.

Mr S rejected Lighthouse's offer. He said he didn't think it was fair that Lighthouse had used the up-to-date economic assumptions within its redress calculation and instead should use those either at the date it upheld Mr S' complaint – September 2020 – or the date it did its initial redress calculation – January 2022.

In October 2023, in an attempt to resolve the matter, Lighthouse performed another redress calculation. As it didn't have the exact figures for Mr S' current personal pension it estimated some amounts. It said the calculation showed that Mr S had not suffered a financial loss. But it again made a time limited offer of £5,000 to resolve the matter. Mr S rejected that offer and asked an Ombudsman to decide the complaint.

The matter has since been referred to me.

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. This includes the Principles for Businesses ('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 acknowledged its advice for Mr S to transfer out of his DB scheme wasn't suitable for him. So I don't intend to comment further on that. Save that is to say that I agree with its analysis that a transfer wasn't in Mr S' best interests. However, Mr S remains dissatisfied that Lighthouse hasn't appropriately addressed the impact of that unsuitable advice, so I will focus on that matter below.

Both sides have raised a number of points about what the approach to a fair redress calculation should be. I've considered all comments on file carefully. However, I don't intend to address each and every point raised here. Instead I will concentrate on what I see as being the remaining outstanding issues.

One of the matters at issue was the date Lighthouse should use as Mr S' retirement date to be used in the redress calculation. It appears that both sides now accept that the appropriate date is 2 September 2019. But for the avoidance of doubt, I'll add that I agree that is the appropriate date. That's because – while Mr S had taken some TFC lump sums prior to that – he and his wife remained in work. However, from September 2019 Mr S started taking a regular pension income to support their lifestyle after his wife had stopped work. So I agree that September 2019 is the correct date to consider as Mr S' date of retirement for the purposes of the redress calculation.

Lighthouse has previously agreed to do a redress calculation using the FCA's BSPS calculator. Indeed it has already done so, albeit using some estimated rather than accurate figures.

Mr S doesn't think that calculation is fair as he believes it uses inappropriate market assumptions. He thinks that, rather than using the financial market assumptions applicable at the date Lighthouse calculated redress recently it should instead use the market assumptions from either:

- The date Lighthouse originally upheld his complaint in September 2020
- When it did its initial redress calculation in January 2022.

It might help if I explain that the aim of a redress calculation is not to put the consumer into a better position than they otherwise would have been had they stayed in their DB scheme. Instead the methodology and calculator developed by the FCA is designed to put a consumer like Mr S back in the financial position he would have been in at retirement had he remained in the DB scheme.

The calculations themselves are fairly complex. They include assumptions about future market conditions, interest rates and investment returns. And those assumptions are susceptible to market forces. That means that the outcome of those calculations will fluctuate with time as the FCA updates the market assumptions the calculations use. And for consumers like Mr S, the FCA has developed a BSPS specific calculator which applies those assumptions fairly.

In essence the calculations look to establish whether or not a consumer like Mr S has sufficient funds in their current pension arrangement to secure equivalent retirement benefits that they would have been entitled to from either the BPS2 or the PPF, had they not transferred out. The calculator uses economic and demographic assumptions as set out by the FCA in order to do so.

If the calculation shows there is not enough money in the consumer's pension arrangement to match the BPS benefits they would have received, the shortfall is the amount owed to the consumer. If the calculation shows there is enough money in the consumer's pension arrangement, then no redress is due. That means, despite the fact that we might have found that the transfer wasn't in a consumer's best interests, it doesn't automatically mean that they are worse off or will be entitled to compensation. That is something the calculation will determine.

As I've said above, in order to be fair at the time a calculation is completed the financial assumptions are those most recently given by the FCA. The calculations are then valid for three months. However, once that three month window has closed, the calculation may no longer be reflective of the anticipated market conditions. So, if for any reason the calculation needs to be redone, it would need to be updated with new financial assumptions as given by the FCA at the date of the new calculation.

In this case Mr S has suggested that Lighthouse should apply market assumptions to any new calculation which are well outside of the three month window. Indeed the earlier of the two dates he proposes is over three years ago. So, if I were to instruct Lighthouse to calculate redress based on the market assumptions at that time, the figures it used wouldn't reflect the FCA's updated assumptions and would produce an unfair result.

Mr S has also argued that Lighthouse should use a historic date to calculate redress because it delayed in completing the calculation initially. For example, he said it twice asked him for a letter of authority to approach third parties which he'd already provided. I haven't investigated Lighthouse's delay in arriving at its calculation. But I'm aware it was carried out by a third party firm not connected to Lighthouse and which it appointed on the directive of the FCA. And, I have no reason to believe the third party firm had anything to gain by delaying the calculation. So, while the delay isn't helpful I don't believe it was deliberate. And the markets could have moved in either direction during that time. So I don't think any delay in calculating redress is a valid reason to instruct Lighthouse to act outside of the FCA's current rules for calculating redress.

Mr S has also referred to a 'Pensions Review Bulletin' issued in December 1998. The bulletin was a joint publication from the various financial regulators of that time. An article within it says that where firms have not correctly followed guidance when completing redress

calculations, which has resulted in reduced or no redress then the firms should revisit the case. Mr S believes this bulletin supports his argument that Lighthouse should revisit its January 2022 calculation. However, none of the regulators responsible for issuing the December 1998 bulletin still exist. Instead the current regulator, the FCA has issued specific guidance, updated in 2023 about a fair manner in which to calculate redress. And the regulatory landscape has evolved since 1998. So, I don't think it would be fair or reasonable to instruct Lighthouse to act outside of the current regulatory rules now based on guidance issued by defunct regulators over 25 years ago.

I do understand that, since Lighthouse completed its redress calculation in 2022 we have concluded that it had used an incorrect date for Mr S' retirement when doing so. And it's possible that, had it used the correct retirement date (September 2019) the redress calculation output might have been different. So Mr S might think that's unfair. However, as I've already said, calculations are valid for three months – and that was the case in January 2022 – but Mr S didn't raise his concerns about that calculation with this office until June 2022, some five months later. So, by that time, it would have been too late to revisit the January 2022 calculation and another would have been required. Since then, our Investigator recommended that Lighthouse should do a new calculation using the September 2019 retirement date but Lighthouse didn't initially accept that recommendation and asked for an Ombudsman to decide the matter. That is something it is allowed to do. And the process for doing so takes time. But that's not Lighthouse's fault and during that period the markets could have moved in either direction.

So, I think it's fair for Lighthouse to do another redress calculation using the appropriate market assumptions at the date of its calculation.

Mr S also told us the matter had caused him some stress and anxiety. I've noted from Lighthouse's yearly reviews with him that he was, for the most part, satisfied with how his personal pension was performing. He'd also withdrawn £100,000 in TFC from his pension prior to taking a regular income. So it would appear he's had some benefit from the transfer. That said, while the recent calculation shows Mr S probably hasn't lost out financially, I accept that the uncertainty he's experienced as a result of Lighthouse's advice has caused some distress and concern by finding out it may not have been suitable. And I'm conscious this upset wouldn't have happened but for Lighthouse's advice. So, in the circumstances, I think our Investigator's recommendation of a £200 payment for that distress is fair and reasonable.

Putting things right

For the reasons set out above 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>.

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 S 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, compensation should be based on the date Mr S began withdrawing a regular income from his pension which I understand was from September 2019.

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 S' acceptance of this 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 S redress as a cash lump sum payment,
- explain to Mr S before starting the redress calculation that:
 - the 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 the redress prudently is to use it to augment his DC pension
- offer to calculate how much of any redress Mr S receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr S accepts Lighthouse's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr S for the calculation, even if he ultimately decides not to have any of the redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr S's end of year tax position.

Redress paid to Mr S 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 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 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.

In addition, Lighthouse should pay Mr S £200 for the distress caused by the disruption to his retirement planning.

My final decision

I uphold this complaint and require Lighthouse Advisory Services Limited to carry out the steps outlined in the 'putting things right' section of this decision.

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

Joe Scott
Ombudsman