DRN-3574861

The complaint

Mr O complains about the advice given by Lighthouse Advisory Services Limited (‘LASL’) to transfer the benefits from his defined-benefit (‘DB’) occupational pension scheme, the British Steel Pension Scheme (‘BSPS’), to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

In March 2016, Mr O’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’), 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 included that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr O’s employer would be set up – the BSPS2.

Mr O approached LASL for advice about his BSPS pension, as his trade union indicated it had arranged for advice from LASL to be available to give members guidance about their choices.

LASL met with Mr O on 4 August 2017 and completed a fact-find to gather information about his circumstances and objectives. Mr O was 47, in good health, employed full time, married with two children, one of whom was still financially dependent. It was recorded that Mrs O had some quite significant health issues.

Mr and Mrs O owned their own home with a small outstanding mortgage of around £5,000 that was due to be repaid in the next three years. No other outstanding liabilities were recorded, nor were any savings or assets, beyond their home. And their combined income was recorded as exceeding their outgoings each month.

In addition to Mr O’s BSPS benefits, which were noted as having a cash equivalent transfer value (‘CETV’) of £556,451.10, he was also a member of his employers new defined contribution (‘DC’) pension scheme.

LASL noted that Mr O wanted to retire at age 55, the earliest he could, to spend time with Mrs O, given her health conditions. It said he expected to need an income of £1,400 per month in retirement as his mortgage would be repaid and he expected his children to both be financially independent. LASL said Mr O wanted advice on transferring out of the BSPS to ensure he could do this. And he also wanted Mrs O to benefit from the flexibility of the pension, in the event he was to die unexpectedly.

LASL also carried out an assessment of Mr O’s attitude to risk, which it deemed to be ‘low medium’ or 5 on a scale of 1-10.

LASL advised Mr O to transfer his pension benefits into a personal pension. Mr O has provided a copy of the suitability report he received which is dated 5 August 2017. This said Mr O had lost faith in his employer and wanted a solution independent to it. And remaining in his existing scheme couldn't give income flexibility or control over investment choice. So LASL said it recommended a transfer to:

- Ensure Mr O could access his pension when and how he planned.
- Provide a legacy to Mrs O that she could use flexibly to support her in the event Mr O passed away.
- Allow Mr O to have control of his pension benefits, how he accessed them, and the level of income he took from his pension.

LASL recommended a specific pension provider and fund, that it said was in line with Mr O's attitude to risk and provided information about the past performance of this fund. The recommendation explained that LASL's fee for providing advice would be deducted from the transfer value. It was also agreed that LASL would provide ongoing servicing and reviews to Mr O.

On 11 August 2017 it was formally confirmed that the RAA was progressing. And on 25 August 2017, an update was issued about transfer values. This said that the trustees expected to be able to provide improved CETV's to members when the steps in the RAA were carried out – including a large lump sum payment into the scheme.

Although the suitability report outlining its recommendation was dated 5 August 2017, LASL says this wasn't in fact sent to Mr O until after 28 August 2017, as it was undergoing internal checks. And it has provided evidence these checks didn't commence until 21 August 2017.

On 4 September 2017, Mr O signed a form that had been prepared for him by LASL. This said its analysis had not included a comparison with the RAA, which was not yet available. But that the benefits under the RAA are expected to be less than those under the BSPS. So, Mr O was happy to proceed with the transfer based on current comparisons.

The steps of the RAA were completed, and the BSPS separated from Mr O's employer, on 11 September 2017. With an announcement confirming members would now have to choose between joining the BSPS2 or remaining in the BSPS and moving to the PPF. It also explained updated transfer values would be sent to members as well as literature to assist with their choice.

The discharge forms to authorise the trustees to transfer benefits from the BSPS were signed on 25 September 2017. This appears to have been after an updated transfer value was provided – the CETV having increased to £574,596.25.

Mr O complained in 2021 to LASL about the suitability of the transfer advice. He said he felt rushed into making a decision and didn't fully understand the benefits he'd be losing as a result of transferring. Mr O said LASL had fixated on early retirement and flexibility when offering advice. And he said he believed it had just recommended he join its preferred pension provider, without actually researching alternatives.

LASL didn't uphold Mr O's complaint. It said:

- Mr O was looking to retire as early as possible due to his wife's health concerns and he had concerns about what was happening with the BSPS.
- The information on file indicated Mr O might just have been able to meet his income objective by retiring early under the scheme.
- But a transfer made this more comfortable.

- While this wasn't recorded at the time of the advice, Mr O's expenditure may've been higher in early retirement - so the flexibility the transfer provided would've been useful.
- The transfer improved the death benefits of the pension, which it said was one of Mr O's objectives.

So, LASL considered that the advice to transfer was suitable for Mr O, noting he hadn't raised concerns during the annual reviews immediately following the advice.

Mr O referred his complaint to our service. He said he didn't know anything about pensions and had relied on LASL for advice about what was best. While retiring early was something he was thinking about at the time of the advice, he couldn't do so for eight years from that time. And his circumstances could've, and indeed have, changed – with him now not needing or intending to retire early. So, he didn't think the advice was suitable and he should've been advised to defer any decision on transferring to nearer the time. This would've persevered his guaranteed benefits, not put them at risk and ensured that a decision was made when his needs would be clearer. He also indicated he was particularly unhappy with the fee he'd paid for the advice.

LASL told our service, when it considered the complaint, the advice had been subject to a skilled person review by an independent party using the Defined Benefit Advice Assessment tool ('DBAAT'). This had informed its opinion that the advice was suitable. And LASL said we should take this into account.

One of our Investigator's considered the complaint. He thought it should be upheld and that LASL should compensate Mr O for any loss the DB transfer had led to and pay £350 for the distress caused to him. He thought Mr O was unlikely to improve on the benefits he'd have received through the scheme by transferring. And he didn't think Mr O needed to transfer, and give up valuable guarantees, when he was advised to. So, the investigator thought LASL should've recommended that Mr O join the BSPS2.

LASL didn't agree. It repeated that it had arranged a "skilled person review" of the advice as required by regulator, the Financial Conduct Authority ('FCA'), and an independent party had been appointed to carry this out. The skilled person had reviewed the advice, using the FCA's DBAAT and found the advice to be compliant. And it thought the Investigator hadn't considered this and their starting point in considering the complaint was flawed. In particular it said the 'presumption of unsuitability' was guidance, not a rule, and that the overarching consideration was whether the adviser had taken reasonable steps to ensure the advice was suitable.

LASL also said the Investigator's assessment focused too narrowly on whether Mr O could improve on or match his BSPS benefits – it said this was contrary to the guidance the FCA had issued in 2017 (Consultation Paper 17/16 'CP17/16') that firms should not be overly reliant on the critical yield when giving advice as this was leading to poor outcomes for customers. LASL said the Investigator needed to take the DBAAT into account to determine whether the advice was suitable overall. It maintained the advice was suitable as the transfer met Mr O's objectives. It again noted that Mr O was likely to be able to meet his income requirements through the BSPS2 or PPF. But the transfer had given Mr O flexibility in terms of how he could draw his benefits, which it said was a key objective, as well as enabling him to leave the fund to his wife in the event of his death and moving the pension away from the control of his employer.

The investigator wasn't persuaded to change their opinion. They didn't think Mr O needed flexibility in terms of how he could access his benefits. Nor did they think access to alternative death benefits or his concerns about what had happened with the BSPS, meant that a transfer was suitable, given it seemed likely Mr O would receive benefits of a lower overall value. Particularly given LASL had acknowledged Mr O was likely able to meet his income requirements through the scheme.

In August 2022 the FCA launched a consultation on changes to its DB transfer redress guidance. So, the Investigator wrote to Mr O to advise him of the FCA's proposed changes which were due to come into effect in April 2023 and to give him the option to have any redress due to him calculated under the then current guidance or to wait for the new rules to come into effect. Mr O indicated he would like redress calculated under the guidance in place at the time. But the Investigator explained that if the complaint hadn't been settled in full and final settlement by the time the new rules came into effect, he expected LASL to carry out a calculation in line with the updated rules and guidance in any event.

LASL later said, while it still did not think the advice it had given was unsuitable and disagreed with the Investigator's opinion, it was willing to make an offer to settle the complaint. It said, based on a number of assumptions about Mr O's current pension value, it didn't think he was likely to be worse off and, under the FCA's redress guidance, believed Mr O was unlikely to be due any compensation. Nevertheless, it said it was willing to pay Mr O £5,000 in full and final settlement of his complaint. It said its offer was for a limited time and would be withdrawn if not accepted and the complaint still required an ombudsman's decision.

Mr O said he would not be accepting LASL's offer. He said, regardless of if redress was due for any loss, he wanted the advice fee to be refunded, as well as a goodwill sum as compensation.

As agreement could not be reached, the complaint has been referred to me to make a 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.

I think it's important to firstly explain I've read and taken into account all of the information provided by both parties, in reaching my decision. I say this as I'm aware I've summarised LASL's arguments, particularly in response to our Investigator's findings, in considerably less detail than it has. If I've not reflected something that's been said it's not because I didn't see it or haven't thought about it, nor is this intended as a discourtesy to either party. Rather it reflects the informal nature of our service and my role in deciding the complaint. This also means I don't think it's necessary to get an answer, or provide my own answer, to every point raised unless I think it's relevant to the crux of the 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.

The applicable rules, regulations and requirements

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 LASL'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. And the provisions in COBS 19 which specifically relate to a DB pension transfer.

LASL says that its adviser was only required to take reasonable steps to ensure the advice was suitable for Mr O. It says that COBS 19.1.6G is guidance, not a rule or regulation that firms are required to follow, and that the Investigator was wrong to consider this as a starting point. I agree that under COBS, LASL was required to take reasonable steps to ensure that its personal recommendation to Mr O was suitable for him (COBS 9.2.1R). However, additional regulations and guidance applies to advising on transferring out of DB schemes. COBS 19.1.6G says the starting assumption for a transfer from a DB scheme is that it is unsuitable. And that a business should only have considered a transfer out of the scheme if it could clearly demonstrate that the transfer was in Mr O's best interests.

I accept this is categorised as guidance and not a rule per se. But I don't think the importance of this guidance can be overlooked. It is intended to reflect the FCA's view (which it has maintained ever since) that retaining safeguarded benefits is in the best interests of most customers – so it is an important guiding principle for any firm giving advice. And in any event, the FCA still requires that an adviser acts in accordance with the best interests of its client under COBS 2.1.1R. And I think that this reinforces that advice to transfer out of a DB scheme should only be given if it is in the customer's best interest to do so.

So, I've considered all of the applicable regulations and guidance here. And having looked at all the evidence available, for much the same reasons explained by our Investigator, I'm not satisfied LASL took reasonable steps to ensure the advice to transfer was suitable for Mr O or that it was in his best interests. I'll explain why.

Financial viability

When referring to financial viability, I mean how likely it is that Mr O would be better off in terms of the retirement income, by transferring. Because moving from a DB scheme to a personal pension exposed his pension to risk that he wasn't otherwise subject to. And while LASL has argued that Mr O had other motivations beyond improving on his retirement benefits its role was to look at what was in his best interests. And given a pension's primary purpose is to provide the holders income in retirement, whether Mr O would be better off in retirement as a result of a transfer is, in my view, a relevant consideration when looking at what was in his best interests

LASL carried out a transfer value analysis ('TVAS') report (as required by the regulator) showing how much Mr O's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield). This was completed on 5 August 2017. This was based on the existing scheme benefits of the BSPS. But remaining in the BSPS, as it was, wasn't going to be an option for Mr O.

While the suitability report that Mr O was sent is dated 5 August 2017, documents LASL has provided indicate it was reviewed internally before being despatched. That review was dated

21 August 2017. And some of the things the review highlighted were added to the report I've seen. So, it appears that the suitability report was likely not sent until after 21 August 2017 – and indeed LASL made this point in its recent responses, saying its records indicated that the advice was in fact not given until after 28 August 2017.

By 28 August 2017, it had been formally confirmed that the RAA was progressing and details of BSPS2 had been made available. But LASL didn't complete a TVAS using the details of the new scheme or update its advice to reflect that the only options available to Mr O, in respect of the originating scheme, were to remain with the BSPS and join the PPF or move to the new BSPS2. And I think it should've done, so that Mr O had all of the information he needed to make an informed decision.

The suitability report said that LASL only compared the BSPS benefits as it considered that if transferring out of the BSPS was suitable for Mr O, then it would also be suitable advice to transfer and forego any benefits the BSPS2 would provide (given the benefits available to Mr O would've been lower under that scheme). But I still think the benefits available to Mr O through the BSPS2 should've been factored into this advice – even if that meant delaying the advice somewhat – so that he understood exactly what he was giving up. Because by the time LASL says the advice was given, updates had been provided confirming members of the BSPS would be given time to make a choice and that improved transfer values were likely to be forthcoming. So, waiting for this would, in my view, have been appropriate to ensure the advice was in Mr O's best interests. And indeed, LASL's internal review of the advice, dated 21 August 2017 said, one of the potential issues was that this had not been considered. By not doing this the only message Mr O received was that his benefits under the BSPS2 would be less than the existing scheme, without knowing whether this difference was actually significant or whether it would've made a difference to his retirement plans.

On top of this, while the TVAS did provide information about what the PPF might provide from age 65, it included no details of what the PPF might offer at age 55. This is despite the fact-find and suitability report saying that Mr O wanted to retire at age 55 and that this was a key objective and reason for the recommendation. So again, Mr O doesn't appear to have been provided with all of the relevant information he needed to make an informed decision.

Nevertheless, I've looked at the information that was included in the TVAS report to consider if a transfer was in Mr O's interests.

The TVAS said that the critical yields to match the benefits the BSPS would've provided at 65 were 7.26% if Mr O took a full pension and 5.61% if he took the maximum possible tax-free cash and a reduced pension. To match the benefits the PPF would've provided from age 65 it said the critical yields were 4.37% for a full pension and 3.96% for a reduced pension. Again, critical yields were not calculated in respect of what the BSPS2 would offer from age 65. The BSPS2 would've though offered the same income benefits as the BSPS but the annual revaluation pre-retirement and escalations post-retirement would've been lower. The lower annual increases under the BSPS2 would've likely decreased the critical yields somewhat compared to the BSPS. But, based on my experience of other complaints, I still think they would've likely been higher than those reflecting the PPF, particularly at age 65.

Again though, the advice was on the basis that Mr O wanted to retire at age 55. The critical yields required to match the benefits the BSPS would've provided from age 55 were 12.74% for a full pension and 9.05% for a reduced pension. But remaining in the BSPS was not an option. The critical yields required to match the benefits the PPF and the BSPS2 would've provided from age 55 weren't calculated. Which I think was a failing by LASL given the timing of the advice. But, based on what we know about the benefits those two schemes offered and similar complaints I've seen I think the critical yields form the PFF and BSPS2 at age 55 were again likely to be lower than for the BSPS. But they were also in my view likely to be higher than the critical yield figures the PPF returned for age 65 – in much the same way the BSPS critical yields were significantly higher for earlier retirement. This is generally due to the shorter time for growth to be achieved. And again, this has been reflected in other complaints I've seen – critical yields for early retirement under the BSPS2 and PPF are almost always greater than for the equivalent critical yields at the scheme retirement age. So, I think the critical yields in respect of the benefits the PPF and BSPS2 would offer at 55 were likely to be greater than 3.96%.

The advice was given during the period when the Financial Ombudsman Service was publishing 'discount rates' on our website for use in loss assessments where a complaint about a past pension transfer was being upheld. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, I consider they provide a useful indication of what growth rates would have been considered reasonably achievable when the advice was given in this case.

The discount rate at that time for seven full years to retirement, applicable if Mr O were to retire at age 55, was 3.4%. For further comparison, the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.

And, in addition, the risk profile report that LASL compiled in this case said that the "estimated potential annual growth rate" of the asset mix that was going to be targeted for Mr O, in line with his attitude to risk, was 2.58% per year.

I've taken all of this into account, along with the composition of assets in the discount rate, Mr O's 'low medium' attitude to risk and also the term to retirement. There would be little point in Mr O giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme. But here, given I think the lowest critical yield at age 55 was likely to exceed 3.96%, I think Mr O was likely to receive benefits of a substantially lower overall value at retirement than the would've received under the BSPS2 or the PPF, as a result of investing in line with that attitude to risk. And, given the estimated potential growth of the asset mix LASL was proposing for Mr O, it also appears unlikely he'd have improved on the benefits he would've received through the DB scheme at the normal retirement age.

LASL referred in its suitability report to the past performance of the fund it was recommending. But as it will know, past performance is no guarantee for future performance. And this was at odds with its own estimation of potential future growth. In any event, I consider the discount rates and the regulator's standard projections to be more realistic in this regard in the long term rather than projecting historic returns forward, particularly over such a long period of time.

LASL said that it doesn't think the discount rate is a relevant consideration, as it wasn't required to consider this by the regulator. While I haven't based my findings just on this, I think the discount rate is a reasonable additional consideration when seeking to determine what level of growth was reasonably achievable at the time of the advice. Under COBS 19.1.2 the regulator required businesses to compare the benefits likely to be paid under a DB scheme with those payable under a personal pension by using reasonable assumptions. So, businesses were free to use the discount rate as this would be considered a reasonable assumption of the likely returns achievable for a typical investor.

In any event though, this has been considered in tandem with the regulator's published projection rates, which providers were required to refer to, and the estimated growth for the target asset mix LASL detailed. And it is this combination which leads me to believe Mr O would likely be worse off in retirement if he transferred out of the DB scheme.

LASL has also said that the critical yield is an outdated tool and we've focused too heavily on this when considering the complaint, noting that Mr O, like most consumers, was unlikely to be transferring to replicate benefits. But, at the time of the advice, the FCA required LASL to calculate the critical yield and consider the rate of growth required to replicate benefits. So, I think this is a relevant consideration here.

LASL also referred, in its suitability report, to cash flow models that it said showed, if 5% growth was achieved each year, that Mr O could withdraw his target income and the fund would last until he was over the age of 100. But this was dependent on achieving growth at the regulators mid-rate year on year, which I don't think was likely based on his attitude to risk and LASL's own analysis of estimated potential growth. And this doesn't factor in any periods of losses or poor performance. It is also interesting to note that the TVAS report, which appears to have been based on a reference against the actual fund provider LASL recommended, said if the medium rate of return it used was achieved and Mr O drew benefits equivalent to the DB scheme on a flexible basis from either age 55 or 65, the fund would in fact likely run out by age 81 at the latest. So, in reality, I think Mr O's funds had the potential to run out sooner if he transferred out of the scheme.

Taking all of this into account, from a financial viability perspective, I don't think a transfer was in Mr O's best interests. Of course, financial viability isn't the only consideration when giving transfer advice. And LASL has argued that the FCA made clear in CP17/16 that relying on the critical yield alone produces poor outcomes for customers. While I'm mindful that this was a consultation paper and not new rules, I've taken into account that there might be other considerations which mean a transfer is suitable and in Mr O's best interests, despite providing overall lower benefits. I've considered these below.

Flexibility and income needs

LASL says Mr O wanted flexibility to be able to vary his retirement benefits. It also says he wanted to retire at age 55 and achieve an income of £1,400 per month.

The fact find doesn't reference Mr O having the objective of wanting flexibility in how he could draw his benefits. The only reference to flexibility it makes is actually in respect of death benefits available to Mrs O by transferring.

The suitability report does make mention of greater flexibility being something Mr O was interested in. But at the same time, it says he expected to require income of a specific level throughout his retirement and didn't expect to have any need for more. And there was no suggestion in the recommendation, or information about his circumstances, that he expected to need to vary this or to need access to lump sums.

In its response to Mr O's complaint, LASL said it seemed possible Mr O's expenditure in the early years of retirement may be higher. And it said the skilled person review had noted that there'd likely be little additional funds available for such purpose by remaining in the scheme. But, as the complaint response also noted, there was nothing recorded on the file about this being a requirement or even a consideration at the time of the advice.

Taking all of this into account, I don't think Mr O needed flexibility in terms of how he could access his benefits, and this appears to have been more of a "nice to have" than something he needed.

I'm satisfied, at the time of the advice, that retiring early was likely something Mr O was interested in. Mrs O had some significant health conditions, and it appears that spending time with her was at the forefront of his mind. But at the same time Mr O was only 47 when the advice was given – over 7 years from when he could even begin to think about accessing his benefits early. His circumstances could very well have changed in that time – as he says is the case. So, a decision about this could've been deferred until later – and under the BSPS2 he'd still have been able to transfer out at a later date. In addition, while I don't doubt that Mr O aspired to retire early I think, when asked, most people would say they would like to do so. But, for the majority, early retirement means a significant drop in income. Which would dramatically reduce most individuals' spending power and lifestyle choices. As a result, when faced with that prospect at an early retirement age, the majority choose not to retire.

Mr O could also access benefits under the PPF and the BSPS2 from age 55. So, he didn't have to transfer in order to meet his aim of taking benefits from that point. And the skilled person review and LASL's responses to the complaint all note that Mr O could've likely met his income requirements by remaining in the scheme. Although a transfer would make doing so more comfortable.

Taking this into account, I don't think based on the evidence I've seen that I can reasonably say Mr O needed to transfer his pension benefits to meet his objective of potentially retiring early. And again, that objective was in any event subject to change in the time until he would actually be able to retire. So, I don't think it was a suitable recommendation to make an irreversible decision to give up his guaranteed benefits at that stage.

Death benefits

LASL says Mr O was interested in the alternative, lump-sum death benefits available through a transfer and wanted these to be available to Mrs O and his family in the event of his death. But LASL's role wasn't wish fulfilment, it was to advise Mr O about what was in his best interests. Death benefits are an emotive subject and of course when asked, most people would like their loved ones to be taken care of when they die. The lump sum death benefits on offer through a personal pension was likely an attractive feature to Mr O. But whilst I appreciate death benefits are important to consumers, the priority here was to advise Mr O about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think LASL explored to what extent Mr O was prepared to accept a lower retirement income in exchange for higher death benefits.

Mr O's existing pension would also have provided death benefits by way of a spouse's pension. And this could've been useful to Mrs O in the event Mr O predeceased her. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was.

The CETV figure would no doubt have appeared attractive as a potential lump sum. But the sum remaining on death following a transfer was always likely to be different to that figure – unless Mr O had passed away immediately, which was unlikely. As well as being dependent on investment performance, it would've also been reduced by any income Mr O drew in his lifetime. Mr O was recorded as being in good health, so there was nothing to suggest he was less likely to live until at least his average life expectancy. And given what I've noted already about the cash flow projections in the TVAS report, it appears entirely possible the fund would've been significantly depleted by the time he reached his average life expectancy. So, the pension may not have provided the legacy that Mr O may have thought it would. In any event, LASL should not have encouraged Mr O to prioritise the potential for alternative death benefits through a personal pension over his security in retirement.

Mr O was contributing to his employer's new DC pension, which could've been passed on as a lump sum in the event of his death. And if Mr O genuinely wanted to leave a further legacy for his family, which didn't depend on investment returns or how much of his pension fund remained on his death, I think LASL should've instead explored life insurance.

LASL has said this wasn't a feasible alternative and didn't address Mr O's preference for the pension to be passed on. But again, it's role was to advise Mr O on what was best for him, and a pensions primary function isn't to provide death benefits, it is to provide income in retirement to the holder. So, I don't think its argument that insurance, specifically for the purpose of providing death benefits, wasn't a suitable potential solution stands up to scrutiny.

Overall, I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr O.

Control or concerns over financial stability of the DB scheme

LASL's suitability report said Mr O wanted greater control over his pension investments. But I cannot see that he had the experience, interest in or the knowledge to be able to manage his pension funds on his own – which I think is supported by the intention being that he'd receive ongoing servicing and advice in respect of this pension after the transfer. And I think his desire for control has been overstated.

Rather, I think this objective was more linked to the uncertainty about the BSPS. I don't doubt Mr O, like many of his colleagues, was concerned about his pension. His employer had been consulting on its plans for the scheme for some time. And there appears to have been a general mistrust and lack of optimism. I also don't doubt Mr O was potentially worried his pension would end up in the PPF or that he'd heard negative things about this outcome, and this was why he said he preferred to have control over his pension fund. It's also possible that Mr O was leaning towards the decision to transfer because of the concerns he had about his employer and his negative perception of the PPF. But that is why it was even more important for LASL to give Mr O an objective picture and recommend what was in his best interests.

LASL said Mr O didn't want his employer involved in managing his pension fund. And Mr O may well have had negative feelings towards his employer's handling of his pension so far, which I think was a reasonable emotional response. But the trustees of the pension scheme, and the new BSPS2 were not one and the same as his employer. I think LASL should've done more to explain this significant distinction. And I also note Mr O was continuing to work for the same employer, doesn't appear to have any intention to change this and was a member of the employer's new DC scheme. So, the relationship does not appear to have broken down to the extent that LASL has suggested.

By the time the suitability report was issued here, accounting for the fact it appears to have been dated incorrectly, there were updates regarding the BSPS and the BSPS2 that indicated it was progressing and appeared likely to be an option for customers in Mr O's position. So, the advice should've properly taken the benefits available to Mr O through the BSPS2 into account. Which, as I've said, it appears he was unlikely to improve upon by transferring. And I think this should've alleviated some of the concerns Mr O might've had about the scheme moving to the PPF.

But even if there was a chance the BSPS2 wouldn't go ahead, I think that LASL should've reassured Mr O that the scheme moving to the PPF wasn't as concerning as he thought. While he aspired to retire early, his plans weren't confirmed given this was a number of years off. But in any event, he could take benefits early under the PPF. And while the increases in payment in the PPF were lower, it would still have provided a guaranteed income for the rest of his life that was not subject to any investment risk. By transferring he was taking on additional risk and, as I've explained, I don't think he was likely to be substantially better off, such that taking this risk was in his interests. So, I don't think that these concerns should've led to LASL recommending Mr O transfer out of the DB scheme altogether.

DBAAT Tool

LASL says that a skilled person has reviewed the advice and considered it to be suitable. And that we need to have regard for this, and the advice needs to be looked at as a whole with the output of the DBAAT tool being an important consideration. I am satisfied I have already considered the suitability of the advice as a whole. But I've also considered the review LASL has referred to.

The skilled person completed the DBAAT tool in April 2021, and the outcome was recorded as being that the advice was compliant. However, having carefully considered the answers the skilled person gave to the questions tool asked, there are several I disagree with which I think could have led to a different result.

For example, in the section titled 'Examples of unsuitability' the skilled person answered "No" to the following examples:

2) The aim of the transfer is to maximise death benefits but there is insufficient evidence on the client file to demonstrate why this is in the client's best interests.

3) The aim of the transfer is to access flexible benefits but there is insufficient evidence on the client file to demonstrate why this is in the client's best interests.

9) The firm's transfer analysis does not support a recommendation to transfer.

I've explained above why I don't think transferring out of the DB scheme to maximise death benefits or to obtain flexibility was in Mr O's best interests or suitable for him. And I've also explained, although potentially flawed given the information it was based on, the TVAS indicated that the transfer wasn't financially viable given Mr O's risk appetite and the other information LASL recorded at the time.

In addition, I can see that the skilled person answered "Yes" to the following example of unsuitability:

6) The client wants to retire early but can meet their objective(s) while remaining in the scheme.

And the DBAAT flagged the transfer as being potentially unsuitable because of this. But this was overridden, and the transfer deemed suitable. The reason seems again to be that a transfer made meeting the objectives more comfortable. But as I've explained, I don't think it was in Mr O's best interests to sacrifice guaranteed benefits and subject the pension to investment risk when it is acknowledged that he could've met his apparent income objectives without doing so, just for flexibility that he didn't necessarily need.

So, taking all of this into account, while I've had regard for the output of the DBAAT I don't think this demonstrates that the advice given to Mr O here was suitable for him.

Summary

I don't doubt that the flexibility, control and potential for alternative death benefits on offer through a personal pension would have sounded like attractive features to Mr O. But LASL wasn't there to just transact what Mr O might have thought he wanted. The adviser's role was to separate his concerns stemming from the consultation from his genuine needs and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr O was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr O was very likely to obtain lower retirement benefits and in my view, there were no other particular reasons which would justify a transfer and outweigh this. So, I don't think it was in Mr O's best interests for him to transfer his pension benefits to a personal pension when he had the opportunity of joining the BSPS2.

I appreciate that the BSPS2 hadn't been confirmed when the advice was given. But I think it was clear to all parties, particularly based on the updates that were given while the advice was ongoing, that the BSPS2 was likely to be going ahead. Mr O had 17 years before he would reach normal retirement age and 7 years before he could begin drawing any benefits. I don't doubt he was interested in retiring early, based on his and Mrs O's circumstances at the time. But those circumstances could've changed in the time in between and there was no guarantee he would retire early. So, I don't think that it would've been in his interest to accept the reduction in benefits he would've faced by the scheme entering the PPF, as it wouldn't necessarily be offset by the more favourable reduction for very early retirement. And by opting into the BSPS2, Mr O would've retained the ability to transfer out of the scheme nearer to his retirement age if he needed to. Also, under the BSPS2 the spouse's pension would be set at 50% of his pension at the date of death, and this would be calculated as if no lump sum was taken at retirement (even if Mr O chose to take one). The annual indexation of his pension when in payment was also more advantageous under the BSPS2. So, I think had LASL advised him not to transfer, Mr O would've opted into the BSPS2.

Of course, I have to consider whether Mr O would've gone ahead anyway, against LASL's advice. I've considered this carefully. I accept that LASL outlined risks associated with transferring to Mr O as part of its recommendation. But ultimately, it advised him to transfer out of the BSPS, and I think Mr O relied on that advice. And I'm not persuaded that Mr O would've insisted on transferring out of the DB scheme, against LASL's advice. Mr O was an inexperienced investor, in respect of pensions, with a 'low medium' attitude to risk and this pension accounted for the majority of his retirement provision. So, if LASL had provided him with clear advice against transferring, explaining why it wasn't in his best interests, I think he would've accepted that advice.

I'm not persuaded that Mr O's concerns about the ongoing consultation were so great that he would've insisted on the transfer knowing that a professional adviser, whose expertise his trade union had recommended, didn't think it was suitable for him or in his best interests. And if LASL had explained that Mr O could meet his objectives of retiring early without risking his guaranteed pension and provided a legacy in the event of his death by other means, I think that would've carried significant weight. So, I don't think Mr O would have insisted on transferring.

In light of the above, I think LASL should compensate Mr O for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

Mr O has said he'd like the fee he paid for advice refunded, regardless of whether the regulator's methodology requires redress to be paid. But the fee was deducted from his pension on transfer. And the methodology accounts for this as part of the calculation as to whether he has suffered a loss. I know Mr O is disappointed he was given unsuitable advice. But ultimately the regulator has set out what it deems to be appropriate redress to put right instances of unsuitable defined benefit pension transfer advice. And this accounts for the advice fee. So, I see no reason to depart from this in the circumstances of this complaint.

Our Investigator recommended that LASL also pay Mr O £350 for the distress caused by the unsuitable advice. I don't doubt that Mr O has been caused distress and concern by finding out the advice may not have been suitable – particularly given the circumstances and uncertainty under which he first asked for this advice. And I'm conscious this upset wouldn't have happened but for the unsuitable advice. So, in the circumstances, I think the award the Investigator recommended is fair.

Putting things right

A fair and reasonable outcome would be for the business to put Mr O, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr O would have most likely remained in the occupational pension scheme and opted to join the BSPS2 if suitable advice had been given.

LASL 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.

LASL 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 O and our Service upon completion of the calculation.

For clarity, Mr O has not yet retired, and he has no plans to do so at present. So, compensation should be based on the scheme's normal retirement age, as per the usual assumptions in the FCA's guidance.

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 O'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, LASL should:

- calculate and offer Mr O redress as a cash lump sum payment,
- explain to Mr O 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 O receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr O accepts LASL's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr O 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 O's end of year tax position.

Redress paid to Mr O as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, LASL 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 O'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, LASL should pay Mr O £350 for the distress caused by the disruption to his retirement planning.

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 business pays the balance.

My final decision

Determination and money award: I uphold this complaint and require Lighthouse Advisory Services Limited to pay Mr O 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 O the balance.

If Mr O 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 O can accept my decision and go to court to ask for the balance. Mr O 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 O to accept or reject my decision before 20 September 2023.

Ben Stoker
Ombudsman