DRN-3692942

The complaint

Mr C 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.

Mr C is being represented by a third party but for ease of reading this decision I'll largely refer to representations as being made by Mr C.

What happened

In March 2016, Mr C'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 C's employer would be set up – the BSPS2.

On 9 June 2017, the BSPS provided Mr C with a summary of the transfer value of his scheme benefits. These benefits had a cash equivalent transfer value ('CETV') of £697,371.11.

Mr C approach LASL to discuss his BSPS pension. I understand the first meeting between the parties took place on 15 June 2017.

LASL completed a fact-find to gather information about Mr C's circumstances and objectives. Mr C was 52, living with his partner but not married and had one financially dependent child. He was employed, earning just over £54,000 per year and had approximately £26,000 in savings. Mr C owned his own home with an outstanding mortgage of approximately £45,000. He and his partner also owned two rental properties, with total outstanding mortgages of around £90,000. LASL didn't record how long these mortgages had to run but it said Mr C was making overpayments with the intention of clearing them by the time he retired. Mr C and his partner were receiving net rental income from these properties of £600 per month. They intended to retain these properties into retirement. And Mr C's total income at that time was recorded as exceeding his outgoings by over £850 per month.

In addition to the benefits held in the BSPS, Mr C was also a member of his employer's new defined contribution ('DC') pension scheme, to which he and his employer were making combined contributions equivalent to 15% of his salary.

LASL recorded that Mr C was looking to retire at age 57 and expected to need an income of approximately £18,000 per year in retirement. It said he was concerned that moving to either the PPF or BSPS2 would impact his ability to retire early, and he also was concerned, as he was not married, that his partner and child may not benefit from the pension in the event of his death.

LASL also carried out an assessment of Mr C's attitude to risk, which it deemed to be 'high medium' or 6 on a scale of 1-10.

On 9 August 2017, LASL advised Mr C to transfer his pension benefits from the BSPS into a personal pension and invest in one of the provider's managed funds. The suitability report said the reasons for this recommendation where it would ensure Mr C could access his pension at age 57 and gave flexibility to allow him to control the level of income taken. It would also give him control over his pension and benefits and enable him to leave the pension as a legacy for his partner and daughter.

Application forms were completed on the same day the advice was provided. Mr C also signed a form on 9 August 2017 that had been prepared for him by LASL. This said its analysis had not included a comparison with the new scheme being proposed under the RAA, the BSPS2, as details were not yet available. But it said that the benefits under the BSPS2 were expected to be less than those under the BSPS. So, Mr C was happy to proceed based on current comparisons.

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.

The steps of the RAA were completed, and the BSPS separated from Mr C'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 transfer of Mr C's benefits does not appear to have completed by this point. I say this because the amount transferred to his new pension was higher than the CETV quoted in June 2017 – which appears to have been as a result of the revised transfer values mentioned above. Despite this new information being available, including further details of the BSPS2, LASL did not revisit its advice to Mr C.

Mr C complained in 2021 to LASL. He said he didn't think the transfer, and the additional risk this brought, was suitable for him.

LASL didn't uphold Mr C's complaint. It said it believed the transfer was in his interests as it allowed Mr C to meet his objectives and the other options available to him wouldn't have been more advantageous.

Mr C referred his complaint to our service. One of our Investigator's considered the complaint. He thought it should be upheld and that LASL should compensate Mr C for any loss the DB transfer had led to and pay £300 for the distress caused to him. The Investigator noted that there were significant announcements about the BSPS2 forthcoming at the time of the advice. And he felt LASL should've advised Mr C to await this information before making a decision. He also didn't think Mr C had a genuine need for flexibility and the alternative death benefits were not an appropriate reason to give up his guaranteed pension benefits – particularly as Mr C was unlikely to improve on these by transferring. He also noted that under the PPF and the BSPS2, Mr C could've still retired early, but LASL hadn't been clear about that. Overall, he felt Mr C ought to have been advised to remain in the BSPS and that he would've subsequently moved with it to the PPF as this had more favourable reductions for early retirement. And he was satisfied retiring early was a genuine objective of Mr C's – noting he'd accessed benefits from age 55.

LASL didn't agree. It said 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'), developed by the regulator, the Financial Conduct Authority ('FCA'). It said this had found the advice was suitable.

Mr C's representative said it felt redress should be based on the normal retirement age of 65, and on him opting into the BSPS2. It said his plans were unconfirmed at the time of the advice and, although he had accessed benefits from his pension from age 55, felt he'd have found other ways to obtain access to funds if he hadn't transferred. They also said they didn't think making an overall 15% notional deduction from the compensation amount to account for income tax was fair as this didn't account for ongoing charges that Mr C may incur.

The investigator wasn't persuaded to change their opinion, so the complaint was 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'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.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for largely the same reasons given by the investigator.

The regulator, the FCA, states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, LASL should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr C's best interests. While it is true this is categorised as guidance, rather than a rule, I don't think it's importance 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. And having looked at all the evidence available, I'm not satisfied a transfer was in Mr C's best interests.

Financial viability

At the time it gave advice LASL was required by the regulator to carry out a transfer value analysis ('TVAS') and produce an associated report. One of the things that it was required to calculate was the critical yield - how much Mr C's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme at retirement.

I can see that LASL ran several TVAS reports. Two in June 2017, when it's adviser first reached the conclusion that they'd recommend that Mr C transfer. And another in August 2017, after that advice had undergone internal checking. However, I think all three omitted an important piece of analysis.

LASL recorded that Mr C wished to retire at age 57. And its recommendation is clear that this objective was a key driver for its advice. The TVAS reports all calculated the relevant critical yields for retiring at age 65 (the normal retirement age of the BSPS) and age 57 while remaining in the BSPS. They also calculated the critical yield required to match the benefits the PPF would provide at age 65. But no calculation was undertaken of the critical yield required to match the benefits the PPF would provide at age 57.

The suitability report referred to Mr C potentially not being able to access benefits from the PPF before age 65. But I haven't seen anything to support that this was correct. As I understand it, based on wider information I've seen and my experience of similar cases, Mr C would've had the option to retire early under the PPF, because the BSPS provided this option and the PPF would mirror this. It is true, as I'll discuss later, the benefits would've been subject to an actuarial reduction. But he'd have had the option to retire at age 57 through the PPF.

Because of this, and given his recorded aim to retire at age 57, I think the TVAS reports should've included a calculation of the critical yield required to match the benefits the PPF would've afforded Mr C at age 57. Particularly as all the signs pointed to him being unable to retain the BSPS benefits in their existing form. I'm satisfied that this could've been calculated, as I've seen similar calculations carried out in a number of other complaints. And that information should've been shared with Mr C so that he could make an informed decision.

I also think it would've been appropriate for LASL to delay providing its advice, and recommend that Mr C wait, until further details of the BSPS2 were available. Which could've then been factored into its comparison with a relevant TVAS carried out. The CETV that Mr C received on 9 June 2017 was valid until 9 September 2017. So, at the time LASL advised him to transfer, it was still guaranteed for a further month. Delaying the advice to account for new information becoming available would, in my view, have therefore been appropriate. And, if it had been delayed, details of the BSPS2 would've been forthcoming before the CETV expired, as would confirmation that updated transfer values would be forthcoming free of charge and that members would be given time to make a choice. Indeed, LASL's own internal review of the advice, completed on 5 August 2017, said that waiting for details of this would be appropriate and referred to this information being due imminently.

Transferring out of a DB scheme is a one-off event. Once transferred there's no going back, the benefits of the DB scheme are usually lost forever. Waiting would've allowed LASL to carry out an analysis of the BSPS2 benefits, and properly compare these to the alternatives, and based it advice on this. Without doing this, LASL was acting on information which it knew to be limited, so it is difficult to argue that it could properly assess whether a transfer was in Mr C's best interests. And the only message Mr C 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.

Nevertheless, I've looked at the information that was included in the TVAS report to consider if a transfer was in Mr C's interests. Specifically, I've considered the latter of the three TVAS reports LASL instructed.

The TVAS said that the critical yields to match the benefits the BSPS would've provided at 65 were 7.97% if Mr C took a full pension and 5.69% if he took the maximum possible tax-free cash and a reduced pension. To match the benefits the PPF would've provided at 65 it said the critical yields were 4.01% for a full pension and 3.51% for a reduced pension.

As LASL didn't await the further information about the BSPS2 or revisit its advice when this was available (before the transfer completed) the critical yields for it were not calculated. The BSPS2 would've 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.

The advice though was given on the basis that Mr C intended to retire at age 57. The critical yields required to match the benefits the BSPS would've provided from age 57 were 16.79% for a full pension and 10.83% for maximum tax-free cash and a reduced annual pension.

The critical yields required to match the benefits the PPF and the BSPS2 would've provided from age 57 weren't calculated. But, based on what we know about the benefits those two schemes offered and similar complaints I've seen I think the critical yields the PFF and BSPS2 would've returned at age 57 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 Mr C at 57 were likely, in this case, to be quite a bit greater than 3.51%.

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 four full years to retirement, applicable if Mr C were to retire at age 57, was 3%. 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%.

LASL said that Mr C had a 'high medium' risk profile. But looking at the information from the time, I'm not convinced that Mr C's attitude to risk was at this level. Mr C was specifically asked if, compared to the average person he would say he took more risks but disagreed. He also agreed with statements that he thought it was reckless to take financial risks and he would rather know he was getting a guaranteed rate of return that be uncertain about investments. And he indicated he'd only be willing to tolerate small losses. The capacity for risk analysis also referred to Mr C not intending to use the investment for 6 to 10 years. But the recommendation again was based on Mr C intending to retire by age 57, in under 5 years, and that he'd begin drawing benefits from this pension. And bearing in mind the reason for him seeking advice was the apparent risk to his pension that the consultation posed, it appears that Mr C may've had a lower attitude to risk than LASL suggested. But, in any event, 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 C, in line with his recorded attitude to risk, was 3.25% per year.

I've taken all of this into account, along with the composition of assets in the discount rate, and also the term to retirement. There would be little point in Mr C giving up the guarantees available to him through his existing 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 57 was likely to exceed 3.51%, even if Mr C had a 'high medium' attitude to risk as LASL suggests, I think he was always likely to receive benefits of a lower overall value at retirement than he would've received under the BSPS2 or the PPF, as a result of transferring and investing in line with LASL's recommendation. And indeed, the recommendation letter noted *"the yields are not guaranteed to be achievable based upon your attitude to investment*".

LASL referred, in its suitability report, to cash flow models that it said showed, if 5% growth was achieved each year, that Mr C could withdraw and income starting at £18,000 at age 57 and escalating and 2.5% per year 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 based LASL's own analysis of estimated potential growth doesn't appear likely. And this doesn't factor in any periods of losses or poor performance.

So, based on what I've seen, I don't think, from a financial viability perspective, that a transfer was in Mr C's best interests. 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've considered this below.

Flexibility and income needs

LASL said Mr C wanted flexibility to be able to vary the income he took throughout retirement and was concerned he wouldn't be able to retire at age 57 under the PPF or the BSPS2.

The fact-find didn't though identify, at the time of the advice, any expected need for Mr C to take tax-free cash before he began drawing an income from his pension. And it suggested he expected to need a specific level of income throughout retirement. So, I don't think Mr C required flexibility in retirement in terms of how he could access his benefits. Rather this appears to have been a 'nice to have' instead of a genuine need.

In terms of early retirement being possible, again LASL chose not to wait for further information about the BSPS2 to be available or to revisit and update its advice once this was provided, before the transfer. So, Mr C wasn't provided information about the availability of this option under the BSPS2 before the transfer took place.

LASL made reference in its recommendation to benefits potentially not being accessible before age 65 under the PPF and transferring ensuring he could meet this objective. But I haven't seen anything to support what it suggested – that benefits couldn't be taken early under the PPF. And it contradicted this later in the recommendation by saying early retirement would be available. So, the information about this wasn't as clear as it should've been to allow Mr C to make an informed decision.

For the avoidance of doubt, under both the PPF and the BSPS2 Mr C could've accessed his pension benefits from age 57. So, he didn't need to transfer in order to meet this objective. I would add that given Mr C's age at the time of the advice I think retiring at 57 appears likely to have been a genuine aspiration, which was achievable, and this has been further supported by what he has done since - drawing pension benefits from age 55 onwards.

It is true that if Mr C drew his benefits at age 57 under either the PPF or the BSPS2, the structure under which he could take them would be quite rigid – he could choose at the outset whether to access tax-free cash and then would receive a regular pension income (guaranteed and escalating). But again, I don't think he had a genuine need for flexibility.

The amount he could take on early retirement under either option would be subject to an actuarial reduction – in the same way the BSPS would've been if the issues with that hadn't arisen, and it had continued as originally intended. The actuarial reduction is intended to reflect the pension benefits are being paid for longer and by retiring at age 57 Mr C would've been receiving his pension eight years sooner.

Again, LASL didn't analyse the benefits that would've been available to Mr C under the PPF from age 57 – which I think it should've done. But I can make some assumptions about what these were likely to be.

The TVAS report estimated that at age 65 the BSPS would pay Mr C a starting pension of £37,875 or tax-free cash of £167,343 and a reduced pension of £25,101. At age 57 the BSPS would pay a full starting pension of £23,392 or tax-free cash of £110,284 and a reduced annual pension of £16,452. At age 65 the PPF was estimated to offer Mr C a full pension of £32,052.55 or tax-free cash of £163,983.84 and a reduced annual pension of £24,664.97.

So, at age 65, the benefits the PPF would offer were less than those the BSPS would. And based on my experience, for early retirement the benefits the PPF would provide also tended to be lower than those the BSPS would provide. But the difference is not always that great, as the PPF had relatively favourable early retirement reductions. And the closer the pension holder was to retirement, the smaller the difference between what the PPF would offer for early retirement to the BSPS tended to be. So, as Mr C was 52, and only a short period from retirement, I think the benefits the PPF would've offered at age 57 were likely to be less than those the BSPS would provide, but not necessarily significantly so.

And based on this and his circumstances, I think it's likely Mr C could've still met his income needs in retirement by retiring early under the PPF.

It is true that if he'd taken tax-free cash under the PPF, his income was likely to be below what the BSPS would offer in equivalent circumstances, estimated to be £16,452. But he didn't have any recorded needs for tax-free cash. So, even if he chose to draw this, he could've retained and used it to meet any income shortfall. In addition, Mr C was also contributing to his employer's new DC pension scheme, with his and his employer's combined contributions being equivalent to 15% of his salary. Before even accounting for growth, Mr C increasing contributions or being awarded any pay rises, it's likely that by age 57 this policy would've been worth over £40,000. And again, Mr C could've used these benefits, flexibly, to meet any initial shortfall in his pension needs. And Mr C indicated that he and his partner intended to retain their rental properties, which provided them a net income of £600 per month. Which again appears likely to have been enough to cover any shortfall between the income the pension provided and Mr C's expected income requirement.

Taking all of this into account, I don't think it was in Mr C's best interests to give up the guaranteed income he was entitled to under his existing scheme – which as I've already explained I think he was unlikely to improve on by transferring – just to achieve flexibility that he didn't need. Mr C was likely to be able to meet his objective of retiring early in the existing scheme, even accounting for any reduction in benefits he might incur by moving to the PPF.

Death benefits

LASL says the ability to leave his pension fund to his partner and child was important to him, noting it wasn't certain that his partner would qualify for a spouse's pension under the existing pension, as they were unmarried. I can't see though that LASL enquired whether Mr C and his partner may get married in the future – with the spouse's benefit then becoming accessible. Nor does it appear that LASL actually sought to confirm whether Mr C's partner would qualify as things currently stood, rather it seems to have just assumed she would not.

In any event, while death benefits are an emotive subject and important to consumers, a pension is primarily designed to provide income in retirement. Of course, when asked, most people would like their loved ones to be taken care of when they die. And the lump sum death benefits on offer through a personal pension might've been an attractive feature to Mr C. But whilst he might have thought it was a good idea to transfer his DB scheme to a personal pension because of this, the priority here was to advise Mr C about what was best for his retirement provisions. And I don't think LASL explored to what extent Mr C was prepared to accept a lower retirement income in exchange for higher death benefits.

In addition, whilst the CETV figure would no doubt have appeared attractive as a potential lump sum, the sum remaining on death following a transfer was always likely to be different to that figure – unless Mr C 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 C drew in his lifetime. There was nothing to suggest Mr C wasn't in good health or that he was less likely to live until at least his average life expectancy. And so, it appears entirely possible the fund would've been significantly depleted by the time it was passed on to any dependents. So, the pension may not have provided the legacy that Mr C may have thought it would. In any event, LASL should not have encouraged Mr C to prioritise the potential for alternative death benefits through a personal pension over his security in retirement.

And if Mr C 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. It indicated in the recommendation letter that Mr C has said he didn't want to discuss providing for his dependents, which was why this was not assessed. But this would seem to contradict Mr C's apparent concerns about providing a legacy for his family through his pension. So, I think this should've been explored with Mr C, even if he'd initially discounted this, as LASL's role was to advise him on what was in his best interests. Mr C had quite a healthy surplus income each month with which to potentially pay for cover. And again, there was nothing to suggest that he wasn't in good health, so this was likely to have been affordable and, in any event, could've been explored on a whole of life or term assurance basis, which was likely to be a lot cheaper to provide.

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 C or meant that transferring was in his best interests.

Control or concerns over financial stability of the BSPS

LASL noted that Mr C viewed leaving his benefits where they were as 'high risk' and wanted control over his pension. I note that Mr C was recorded as having experience of buying shares in the past. But he doesn't appear to have still held these at the time of the advice. And, even if this was the case, I don't think this meant he had enough relevant experience or knowledge to be able to manage his pension fund on his own. Particularly given the size and importance of his pension pot, which represented almost all of his private pension arrangements. And the reference to remaining in a scheme that provided guaranteed benefits and had a safety net in the form of PPF, as being 'high risk' seems to underscore this potential lack of relevant knowledge. So overall, I think this 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 C, 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 C was potentially worried about what his pension ending up in the PPF would mean or that he'd heard negative things about this outcome. And this was potentially why he viewed this as 'high risk' and could've meant he was leaning towards transferring and why he suggested he'd preferred to have control over his pension fund. But that is why it was even more important for LASL to give Mr C an objective picture and recommend what was in his best interests.

Mr C 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 were not one and the same as his employer, nor was the PPF. I think LASL should've done more to explain this significant distinction. I also note Mr C 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 completely broken down.

When LASL advised Mr C to transfer, important updates about the BSPS2 were imminent – as its own internal reviewer noted. If Mr C did have concerns about the PPF, I think LASL should've waited for more details of the BSPS2 to become available, before advising Mr C, as this could've gone a long way to alleviating some of his concerns.

But in any event, I think that LASL should've reassured Mr C that the scheme moving to the PPF wasn't as concerning as he thought. Taking benefits early under the PPF was an option – so he could've still retired early. 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. Instead, though LASL seems to have provided conflicting and misleading information which suggested that taking benefits early under the PPF was potentially in doubt. So, I don't think the information LASL gave Mr C about this was clear and fair and I don't think any concerns Mr C might've had about the PPF should've led to LASL recommending he transfer out of the DB scheme altogether.

Suitability of investments

LASL recommended that Mr C invest in a particular fund with his new pension provider. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr C, it follows that I don't need to consider the suitability of the investment recommendation. This is because Mr C should have been advised to remain in the DB scheme and so the investments wouldn't have arisen if suitable advice had been given.

Summary

I don't doubt that the flexibility, control and alternative death benefits on offer through a personal pension would have sounded like attractive features to Mr C. But LASL wasn't there to just transact what Mr C 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.

LASL says that a skilled person has reviewed the advice, using the DBAAT which was developed by the FCA, and considered it to be suitable. LASL hasn't provided a copy of the DBAAT assessment that it says was carried out here. So, I haven't seen how the reviewer answered the various questions. But regardless I am satisfied I have considered the suitability of the advice as a whole. And ultimately, having done so, I don't think the advice given to Mr C was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr C was very likely to obtain lower retirement benefits and, in my view, for the reasons I've explained above, there were no other particular reasons which would justify a transfer and outweigh this. So, I think LASL should've advised Mr C to remain in his DB scheme.

While I know his representative does not agree, I think retiring early was a genuine objective for Mr C at the time of the advice. And the fact that he has gone on to draw benefits from age 55, in my view reinforces this. As a result, I think, if suitable advice had been given here, Mr C would've likely gone on to move to the PPF, because of the more favourable early retirement reductions it offered, given his intention to retire early. I also don't agree with his representative that Mr C only drew benefits from that point because he transferred. It appears to have been a clear intention of his to retire early and access his benefits. And, based on what I've seen, given the amount he required for his purposes at the point he accessed his benefits, I think he'd have always obtained these from his pension.

Of course, I have to consider whether Mr C would've gone ahead with a transfer anyway, against LASL's advice and I've considered this carefully. But I'm not persuaded that Mr C would've insisted on transferring out of the DB scheme, against LASL's advice. I accept that LASL outlined some of the risks associated with transferring to Mr C. But ultimately, it advised him to transfer out of the BSPS, and I think Mr C relied on that advice.

While Mr C had apparently purchased shares previously, I've not seen anything to suggest he had much experience regarding managing his pension. His BSPS pension accounted for the majority of his retirement provisions. And he was unlikely to improve on the benefits he was due by transferring and the risk was lower, even if he didn't fully understand that. 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 his concerns about the consultation or his apparent preference for flexibility and alternative death benefits were so great that he would've insisted on the transfer knowing that a professional adviser, whose expertise he had sought out, didn't think it was suitable for him or in his best interests. If LASL had explained that he could've still retired early by remaining in the DB scheme and provided a legacy to his family through other means, without risking his guaranteed pension, I think that would've carried significant weight. So, I don't think Mr C would have insisted on transferring.

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

I've thought about Mr C's representative's point regarding the 15% deduction from any redress payable, to take into account the tax Mr C would've paid had this been taken as income. It believes this is unfair as it doesn't account for the charges that would've been deducted from the fund value over that time. While I appreciate the representative feels this may unfairly reduce the redress payable, I'm mindful that it is not possible to provide exact compensation in these circumstances, as the only way to achieve this would be to put Mr C back into the scheme as if the transfer out hadn't happened – which isn't possible. So, overall, I remain of the view that the redress proposed fairly compensates Mr C for the impact of the unsuitable advice he received.

Our Investigator recommended that LASL also pay Mr C £300 for the distress caused by the unsuitable advice. I don't doubt that Mr C 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 C, as far as possible, into the position he would now be in but for the unsuitable advice. As I've explained, I consider Mr C would most likely have remained in the occupational pension scheme and moved with it to the PPF 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 C and our Service upon completion of the calculation together with supporting evidence of what LASL based the inputs into the calculator on.

For clarity, Mr C began drawing pension benefits from age 55. So, compensation should be based on him taking benefits at that 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 C'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 C redress as a cash lump sum payment,

- explain to Mr C 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 C receives could be augmented rather than receiving it all as a cash lump sum,

- if Mr C accepts LASL's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr C 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 C's end of year tax position.

Redress paid to Mr C 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 C'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 C £300 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

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

<u>Recommendation:</u> If the compensation amount exceeds £160,000, I also recommend that Lighthouse Advisory Services Limited pays Mr C the balance.

If Mr C 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 C can accept my decision and go to court to ask for the balance. Mr C 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 C to accept or reject my decision before 10 October 2023.

Ben Stoker
Ombudsman