DRN-4437052

The complaint

Mr E 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 E 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 E.

What happened

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

Mr E appears to have first been in contact with LASL to discuss his pension in November 2016.

LASL completed a fact-find, on 15 November 2016, to gather information about Mr E's circumstances and objectives. It recorded, amongst other things, that at that time Mr E was 53, married with three children, one of whom was still financially dependent. LASL said Mr E intended to leave his current job at age 55 and set up a self-employed property development business. It understood he already owned a couple of properties on a buy-to-let basis, in addition to his main residence. And it noted Mr E intended to use his tax-free cash ('TFC') from his pension to help purchase another couple of properties, although also suggested in another part of its notes he would use the TFC for "the nice things in life such as holidays and weekends away". LASL said Mr E intended to retire completely at age 60 and thought he'd need an income of £1,500 per month in retirement. And it said he wanted flexibility to be able to vary his income and the option of leaving his pension as a lump sum in the event of his death.

On 21 November 2016, LASL recommended that Mr E transfer his BSPS benefits – which at the time had a cash equivalent transfer value ('CETV') of £306,293.21 – to a personal pension with a named pension provider. The recommendation letter explained LASL thought Mr E had a 'lowest medium' attitude to risk or four on a scale of one to ten, with one being lowest risk and ten highest. And it thought the level of growth required to enable Mr E to obtain benefits at retirement equivalent to those the BSPS guaranteed, known as the critical yields, were unachievable. But LASL still recommended a transfer as this addressed his main concern about the status of the BSPS by giving him control over his pension and also gave him flexibility to draw TFC when he wanted, the potential to maximise TFC and provided alternative lump sum death benefits.

Mr E did not follow LASL's advice at that time and didn't proceed with a transfer.

The status of the BSPS continued to be reviewed. And in May 2017, an announcement was made that the terms of a Regulated Apportionment Arrangement ('RAA') had been agreed. That announcement said that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr E's employer would be set up – the BSPS2.

Mr E obtained an updated transfer valuation from the scheme trustees on 28 June 2017. The CETV of his pension benefits at that point was £587,734.86. He also obtained an illustration of the pension he could potentially take under the scheme at that time if he retired immediately. This indicated Mr E could potentially take a full pension starting at £16,378.33 per year or TFC of £77,597.16 and a reduced starting pension of £11,639.57.

On 11 August 2017 it was formally confirmed that the RAA was progressing and that it was expected to take effect around 11 September 2017.

I understand Mr E got back in touch with LASL. He has said this was prompted by the increased CETV which led him to again question if a transfer was right for him. LASL has provided a contact note that was dated 22 August 2017 and a copy of its fact find with some additional information included. As well as now being 54, LASL noted Mr E said he'd sold the buy-to-let properties that he'd previously owned which had resulted in him now having £40,000 in savings.

Mr E said he enjoyed his job and could envisage working to age 65. But LASL said he was still interested in having flexibility to retire early or set up a property business if he chose to. And it said he wanted to access the maximum TFC he could take, at age 55, and use this and any remaining savings to purchase a further property which he intended to rent out to boost his income and provide long term security of income when he retired. LASL said Mr E's attitude to risk was still 'lowest medium'.

LASL issued another recommendation report, also dated 22 August 2017. In this it again recommended that Mr E transfer his BSPS benefits to the same personal pension plan with the same named provider that it had previously recommended. This noted that there had been recent announcements relating to the pension, that the BSPS2 was envisaged to be introduced and members would receive further details. But the report said, as details were unknown and Mr E was concerned that his pension might move to the PPF, LASL was providing advice. LASL said it recommended a transfer as this would give Mr E the flexibility to access TFC whilst being able to defer taking an income – which wasn't an option under his existing scheme – and also provided lump sum death benefits. It noted that the past performance of the recommended fund exceeded the critical yields that had been recalculated.

I understand Mr E applied to transfer in line with LASL's recommendation.

On 25 August 2017, an update was issued by the BSPS 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 E's employer, on 11 September 2017. With an announcement confirming members would have to choose between joining the BSPS2 or remaining in the BSPS and moving to the PPF. I understand an updated transfer value for Mr E's pension was issued on 18 September 2017 with the CETV increasing to £606,900.13. LASL did not revisit its advice following this update, but I understand it was the increased CETV that was ultimately transferred.

Mr E withdrew the maximum possible TFC, £153,110.25 in April 2018, when he reached age 55. I can also see that Mr E began drawing an income from his pension from April 2020. His representative has confirmed he began doing so and that he now only works part time, albeit for the same employer, because of a health condition brought on by his occupation.

Mr E complained to LASL in 2021 about the suitability of the transfer advice. LASL didn't uphold the complaint. It said it thought the advice was suitable based on Mr E's objectives of wanting to access tax-free cash without drawing an income, to improve the death benefits of his pension and to take control of it given the uncertainty around the scheme. It also felt Mr E had been provided sufficient information to make an informed decision about transferring.

Mr E referred his complaint to the Financial Ombudsman Service. One of our Investigators looked into the complaint and thought it should be upheld. He didn't think Mr E was likely to improve on the benefits his DB scheme provided by transferring. And he didn't think Mr E *needed* to transfer to have flexibility to access TFC. He noted that the purpose recorded for accessing TFC was to purchase a property, the rental income from which would provide income security in retirement. But Mr E didn't have an income shortfall and envisaged continuing to work. And the income from the DB scheme was already guaranteed and secure, whereas the potential income from a rental property was not guaranteed. So, the Investigator didn't think this meant a transfer was in Mr E's best interests. Nor did he think the alternative death benefits a personal pension offered meant a transfer was suitable. He believed, if Mr E had been advised not to transfer, he'd have likely joined the BSPS2. So, said LASL should compensate Mr E for any losses caused by the unsuitable advice and pay him £200 for the distress he'd incurred.

Mr E's representative said they felt any redress should be calculated on the basis he wouldn't have drawn pension benefits under the DB scheme until age 65 – which the Investigator had not confirmed. And they 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 E may incur.

Prior to receiving a response from LASL, our Investigator explained to the parties that the regulator, the Financial Conduct Authority ('FCA') had developed a BSPS-specific redress calculator. Although the calculator has been developed for the BSPS consumer redress scheme, it can still be used to carry out calculations in non-scheme cases, such as Mr E's complaint with the Financial Ombudsman Service. And our Investigator informed both Mr E and LASL that if an Ombudsman's decision was required and they upheld the complaint, they may require LASL to calculate any redress due using the FCA's BSPS-specific calculator.

LASL then responded to the complaint, via a representative, saying it disagreed with the Investigator's opinion. It provided a detailed response but in summary said it felt the Investigator had taken the incorrect approach when considering the complaint and that their starting point in considering the complaint was flawed because the FCA's 'presumption of unsuitability' was guidance only, not a rule. And the consideration should be whether the adviser had taken reasonable steps to ensure the advice was suitable. It also said the Investigator hadn't understood aspects of Mr E's circumstances or the reasons that LASL, and a skilled person that had reviewed the advice, felt it was suitable. It added that the skilled person had reviewed the advice, using the FCA's Defined Benefit Advice Assessment Tool ('DBAAT'), which it felt the Investigator had not fairly considered. And, notwithstanding that it accepted Mr E could've achieved the income he required through the BSPS2 or PPF, LASL remained of the opinion that transferring was suitable based on Mr E's objectives and him being able to bear the risk of transferring.

However, LASL then later said, notwithstanding that it still thought the advice was suitable, it had carried out a loss calculation, using the assumed value of Mr E's pension as well as assumptions from the FCA's BSPS specific calculator. And it said that this indicated that

Mr E had not incurred a loss.

Mr E did not accept the calculation. His representatives said they thought LASL should be instructed to carry out a loss calculation as at October 2021, when he first made his complaint, rather than using the economic assumptions relevant now, as this may have resulted in compensation being payable.

Mr E added that the reason he'd gone ahead with the transfer after the second recommendation from LASL was that, because of the increase in the CETV, he was concerned about missing out. And this was influenced by the information LASL had given him previously about the potential negative impact of not transferring and it saying a transfer was suitable, even when the CETV was a lot lower. He also said friends of his had raised complaints about similar advice and received significant compensation, so if the Ombudsman decided he wasn't due compensation he wanted an explanation why his complaint differed from theirs.

As agreement could not be reached 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.

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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 some information, particularly LASL's arguments in response to our Investigator's findings, in considerably less detail than the parties have. 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.

Although LASL carried out a redress calculation in an attempt to resolve matters it has said it still thinks the advice given was suitable. So, I've considered this first.

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 E. It says that COBS 19.1.6G – which says that the starting assumption for a transfer from a DB scheme is that it is unsuitable (the 'presumption of unsuitability') is guidance. It says it is not a rule or requirement that it had 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 E was suitable for him (COBS 9.2.1R). And I accept that COBS 19.1.6G is categorised as guidance. But I don't think the importance of this guidance can be overlooked. It is intended to reflect the FCA's view (which it maintained for a significant number of years before the advice here and is still part of its rules now) that retaining safeguarded benefits is in the best interests of most customers. And that a business should only consider recommending a transfer out of a DB scheme if it could clearly demonstrate that the transfer was in the customers best interests. So, it is an important guiding principle for any firm giving advice.

And in any event, the FCA also requires that an adviser acts in accordance with the best interests of its client under COBS 2.1.1R, which is a rule. 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 transfer.

Having considered the relevant rules and regulations, and all of the evidence available, for much the same reasons explained by our Investigator, I'm not satisfied a transfer was in Mr E's best interests. I'll explain why.

- LASL was required to instruct a transfer value analysis ('TVAS') report by the regulator. This included the calculation of critical yields. LASL has suggested the Investigator placed too much weight on an analysis of the critical yield. But again, the regulator required LASL to calculate this and consider the cost of the guarantees being given up. So, I do think an analysis of the critical yield is relevant.

- The TVAS report that LASL completed looked at the critical yields required to replace the benefits the BSPS and PPF would provide at age 65. But remaining in the BSPS as it was at the time wasn't going to be an option for Mr E. Yet there was no analysis of the benefits the BSPS2 would offer. The suitability report said that LASL considered that if transferring out of the BSPS was suitable for Mr E, then it would also be suitable advice to transfer and forego any benefits the BSPS2 would provide (given the benefits available would've been lower under that scheme). But I still think the benefits available to Mr E through the BSPS2 should've been analysed and explained to him – even if that meant delaying the advice. Because without this he couldn't understand exactly what he was giving up or make an informed decision. And I'm satisfied waiting for additional information was an option, as the transfer valuation Mr E had received still had over a month before it expired at the time of the advice and there had been announcements, referred to in the suitability report, that indicated further information would be forthcoming shortly and that members would be given time to make a choice. And by not waiting the only message Mr E received was that his benefits under the BSPS2 would be less without any real context - which was likely to lead him to view these unfavourably.

- Also, while the TVAS did provide information about what the PPF might provide from age 65, there was no indication of the benefits that the PPF might've provided at age 55. Or what the BSPS2 would provide at that time. Or what guaranteed benefits the CETV would enable Mr E to purchase at age 55 This was despite LASL suggesting that Mr E may look to access his benefits at that age. And, while it said he wanted to access his benefits in a different format than the DB scheme allowed, again I think it would've been appropriate to set out what he'd have been entitled to under the PPF and the BSPS2 to allow him to make an informed decision.

- Nevertheless, I have looked at the TVAS provided. This said that the critical yield to match the tax-free cash and reduced starting pension the BSPS would've offered at age 65 was 6.42%. And to match the benefits in the same format which the PPF would've provided the critical yield was 3.86%. Again, critical yields were not calculated in respect of what the BSPS2 would offer from age 65. But, based on what we now about the BSPS2, I think these were likely to be between those of the PPF and the BSPS.

- LASL referred in its recommendation to the past performance of the pension it was recommending and that this was greater than the critical yields. But as LASL will know, past performance is no guarantee for future performance.

- 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, the regulator required businesses to compare the benefits likely to be paid under a DB scheme with those payable under a personal pension, using reasonable assumptions. And the discount rates give a useful indication of what growth rates would have been considered reasonably achievable for a typical investor. And so, while LASL was not obliged to use the discount rate, it would, in my view, be a reasonable assumption to consider. The discount rate at the time was 3.8% for ten years to retirement – relevant for retiring at age 65.

- The regulator also published lower, middle and upper standard projection rates – which at the time of the advice were 2%, 5% and 8% respectively. And I consider the discount rates and the regulator's standard projections to be more realistic rather than projecting historic returns forward.

- And having considered all of this, and Mr E's 'lowest medium' attitude to risk. I think there was limited scope for Mr E to improve on the benefits the PPF would've offered from age 65. And, if there was an extended period of poor performance or his investments suffered losses that could result in him being worse off in retirement. And I think he was always likely to receive benefits of a lower overall value than the benefits the BSPS2 would've provided.

- Again there was no analysis for early retirement but critical yields for early retirement tend to be higher given benefits would have to be paid for longer and the investment horizon to retirement was shorter. So, I also think Mr E was likely to receive benefits of a lower overall value by transferring, if he retired early.

- LASL said Mr E could bear the risk of transferring, with its cash flow models showing he could draw tax-free cash at age 55 and then take the annual income he expected to need from age 65 and that the pension would last beyond his life expectancy. But these models were based on achieving growth of 6.2% year on year. Which was in excess of the regulators middle projection rate, and I think unlikely to be realistically achievable for Mr E, given his attitude to risk.

- Given a pension's primary purpose is to provide the holder income in retirement, whether Mr E would be better off in retirement as a result of a transfer, in my view, was a relevant consideration. And I think the analysis that was undertaken at the time, which again didn't assess everything I think it should have, indicates Mr E was likely to receive benefits of a lower overall value by transferring. So, I don't think this supports that a transfer was in his best interests.

- LASL says Mr E wanted access to tax-free cash at age 55 but didn't want to take an income from the pension at that time. It also says he wanted the flexibility to potentially retire early if he later chose to – although he envisaged working to age 65. And LASL said he intended to use the TFC to purchase a property to rent out – as this was something he had experience with.

- The evidence I've seen indicates there was nothing recorded at the time of the advice about the cost of the rental property Mr E was apparently interested in buying. So, the amount of TFC that he required wasn't specified.

- The BSPS2 and the PPF would've allowed Mr E to take benefits before age 65. And LASL acknowledged that the benefits from either were likely to be sufficient to meet Mr E's income needs. So, Mr E didn't need to transfer in order to retire early and begin drawing a regular pension, if he had later chosen to.

- It is true that he couldn't have accessed TFC through the PPF or BSPS2 without then having to draw an income from his pension. But if he had taken his benefits through either the PPF or the BSPS2 and continued to work, he'd have had a supplemental income so arguably wouldn't have had any need for a rental income.

- LASL said that Mr E had experience of owning properties on a buy-to-let basis, he was interested in doing so again and the TFC that he could've taken from the BSPS2 or the PPF at age 55 was likely to be lower than what he was able to release from the personal pension. But again, how much TFC was actually required wasn't noted. LASL's role wasn't one of wish fulfilment or to put in place what Mr E might've thought he wanted. It was to advise him on what was in his best interests. While Mr E has gone on to take TFC that doesn't mean the advice was suitable. And Mr E having previous buy-to-let experience doesn't mean, in my view, it was in his interests to give up his guaranteed pension to do this again.

- By transferring Mr E was giving up a guaranteed escalating pension, where the scheme bore all the relevant risks. The transfer meant his pension fund was subject to investment risk – and was expected to be depleted by a quarter within a few months. There was no analysis of the rental income the property Mr E apparently intended to purchase would provide, that could be compared to the guarantees that were being given up. And rental income was in any event not guaranteed.

- Mr E's previous experience also suggests he had knowledge of financing buy-to-let properties in a more conventional way – through borrowing – than by taking a significant amount of money out of what was his main retirement provision. But there was nothing to suggest borrowing was considered as an alternative.

- LASL said Mr E was willing to give up his guaranteed income and has suggested he wanted to do so. But Mr E had a 'lowest medium' attitude to risk and these pension benefits made up the majority of his retirement provisions. He has told us he was influenced to transfer by the negative information about the scheme at the time and his fear of what could happen. I don't think this supports that he wanted to give up his guaranteed benefits but instead that he was concerned about how safeguarded his benefits actually were. He had thoughts on potential options if he did transfer – that involved generating a rental income which the fact find referred to as being to boost his income in retirement. But this seems to have been influenced by his fear that his income would need boosting. However, as LASL has acknowledged more recently the guaranteed benefits under the BSPS2 or PPF appeared likely to be sufficient to meet his needs in retirement. But I don't think enough was done at the time to explain that to Mr E.

- Overall, I don't think transferring for flexibility and to access TFC for the reasons that were discussed as part of the advice were in Mr E's best interests.

- LASL says Mr E wanted the lump sum death benefits a personal pension offered, so a sum could be left to his wife or children in the event of his death. But while the CETV figure would no doubt have appeared attractive as a potential lump sum, the amount remaining on death following a transfer was always likely to be different. It would be subject to market risks and fluctuations and would be reduced by any income or lump sums Mr E took during his lifetime – which he was intending to do shortly after transferring. And there was nothing recorded at the time to suggest Mr E wasn't in good health. So, there was no reason to believe he wouldn't be reliant on his pension to meet his own needs in retirement – which is a pensions primary purpose, not to provide a legacy to the holder's estate. And the pension was therefore unlikely to have provided the legacy Mr E might've thought.

- The DB scheme provided a spouse's pension which would've been payable if Mr E predeceased his wife. While LASL has suggested Mr E didn't think this was particularly valuable, it was guaranteed and would escalate while in payment.

- If Mr E genuinely wanted to leave a lump sum to his family, then life insurance would appear to have been a suitable alternative. This wouldn't have been dependent on investment returns or the amount left in a pension. LASL said this was discounted as it did not feel the associated costs offered any real value. But I don't agree. This would've enabled Mr E to meet his objective of leaving a lump sum – if this objective was genuine – without putting his guaranteed pension income at risk. Cover could've been explored at a level that Mr E chose rather than simply what remained in his pension, which was unknown. And it could've been considered on a whole of life or term assurance basis, the latter likely being cheaper to provide.

- Overall, I don't think different death benefits available through a transfer meant it was in Mr E's best interests. And ultimately LASL should not have encouraged Mr E to prioritise the potential for alternative death benefits through a personal pension over his security in retirement.

- LASL said Mr E had concerns about how his employer had operated the pension and didn't want his benefits to remain under its care. And it said he wanted to take control of his pension. And Mr E has said that he was worried about all of the announcements being made and was led to believe not transferring was risky.

- I can't see though that Mr E had an interest in or the knowledge to be able to manage his pension funds on his own. So, I don't think that having control over his pension was a genuine objective for Mr E – it was simply a consequence of transferring away from his DB scheme.

- I don't doubt that Mr E was likely to have been upset by what had happened with his pension to that point. Or that he had negative feelings about his employer and might've thought moving his pension away from it was appropriate. I think that would have been a very natural emotional response to what was happening. But again, LASL's role was to give impartial, objective advice. Mr E's employer and pension scheme were not one and the same. And Mr E intended to continue in his job and was paying into a new pension scheme with his employer. So, the relationship may not have irretrievably broken down as suggested.

- Mr E may have held concerns about the prospect of his deferred benefits entering the PPF. But there had been a number of key announcements that all pointed toward the BSPS2 being established as an alternative by the time of the advice – which the suitability report referred to. The BSPS2 was expected to provide better benefits than the PPF and still provide Mr E the option to transfer at a later date. And the trustees of this scheme again, were not one and the same as his employer – which is a distinction I think LASL ought to have done more to make clear.

- But in any event PPF still provided Mr E with a guaranteed income and the option of accessing his benefits early. Mr E was unlikely to improve on these benefits by transferring. So, entering the PPF was not as concerning as he might've thought, and I don't think any concerns he held about this meant that transferring was in his best interests.

- LASL has said that its advice has been reviewed by a skilled person, using the DBAAT tool developed by the FCA which the Investigator didn't consider. I've already considered the suitability of the advice as a whole. And having looked at the assessment LASL has referenced, there are several answers that were recorded which I disagree with.

- The reviewer answered that there was sufficient evidence to demonstrate why maximising death benefits was in Mr E's interests. They also said the transfer analysis supported a recommendation to transfer. And they said Mr E wanted to retire early but couldn't meet his needs in the scheme. All of which, for the reasons I've already explained, I question. I also note that the reviewer said yes to a question about whether Mr E would be reliant on the income from the pension, which suggested that the advice was potentially unsuitable. But they overrode that.

- So, taking everything 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 E here was suitable for him.

Overall, I can't see persuasive reasons why it was clearly in Mr E's best interest to give up his DB benefits and transfer them to a personal pension.

Of course, I have to consider whether Mr E would've gone ahead anyway, if LASL had advised him not to transfer. He has said, when he received the increased CETV, this prompted him to act as LASL had already previously suggested not doing so was potentially detrimental and that a transfer was right for him. And LASL had advised him to transfer even when the CETV was significantly lower. So, I can see why he might've been compelled to seek further advice. I don't though think this meant his mind was made up. He still asked LASL for advice. And, while I'm conscious he chose not to follow the advice he was given in November 2016, ultimately LASL advised him to transfer out of the BSPS. And I think Mr E relied on that advice. I'm not persuaded that Mr E would've insisted on transferring, against advice by LASL, a professional adviser whose expertise he had sought out on more than one occasion, to remain in the DB scheme.

As a result, I'm upholding this complaint as I think the advice Mr E received from LASL was unsuitable.

Where we think an error has been made the aim of any recommendation we make is to put the impacted party, as far as possible, in the position they would now be in. Mr E can't though re-join his DB scheme. The FCA developed and has set out a methodology for calculating redress where unsuitable advice has been given to transfer from a DB scheme (like the BSPS). And I think it is appropriate that LASL take steps to put this complaint right, in line with the method the regulator has set.

LASL has evidenced that it ran a redress calculation, which it says suggests Mr E has not suffered a loss. But I note that some of the information input during the calculation was assumed, including the current value of Mr E's pension and withdrawals. So, I think it is appropriate that another calculation be completed, with the relevant information obtained from the appropriate parties.

Mr E has said that he has colleagues that received compensation. And if I don't think he is due redress he'd like me to explain why. But I do think LASL needs to do something to put things right here – carry out a redress calculation. So, I'm not saying that he is not due redress, rather I'm saying that I think it is fair that any redress due be calculated in line with the regulator's methodology.

To put it simply, the way these calculations work is to look at the expected cost of replacing the benefits the DB scheme would've provided – using assumptions which the FCA sets – and compare that with the current value of the pension (including any benefits that have already been taken). If the cost of replacing the benefits that were given up is greater, then the redress would be the difference between the two. If the value of the current pension (and benefits drawn) is more than it would cost to replicate the benefits given up because of the advice, then the pension holder is in a better financial position and no redress is due.

These calculations are based on the individual circumstances of each consumer. So, just because calculations return a loss for some people, that doesn't mean calculations which show no loss in someone else's specific circumstances are incorrect. The calculations also take into account economic and demographic assumptions at the time. And it's worth noting the cost of purchasing an annuity has reduced, which means it would cost less to replace Mr E's BSPS benefits at retirement.

As I mentioned, the FCA developed a BSPS-specific redress calculator. This was developed by actuaries and is programmed by the FCA with benefit structures of the BSPS, BSPS2 and PPF (including the impact of the following buy-out) and relevant economic and demographic assumptions which are updated regularly. This information can't be changed by firms. And I think it is appropriate that the calculation be carried out using this calculator.

Mr E's representative has said that they believe the calculation should be backdated to the point Mr E complained in 2021. But I don't agree. LASL was entitled to disagree with Mr E's complaint. And I think it is fair that any steps to put things right are carried out at the point that his complaint is decided.

While Mr E had a potential use for his TFC in mind, as I've explained, I don't think accessing this for the reasons that were discussed was in his interests. At the time of the advice, Mr E also said he envisaged working until age 65. 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. By opting into the BSPS2, Mr E 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 one was ultimately taken). The annual indexation of his pension when in payment was more advantageous under the BSPS2. So, I think, had he received suitable advice not to transfer, Mr E would've opted into the BSPS2 and the calculation should be on this basis.

I don't though agree with Mr E's representative that it should be assumed he'd have taken benefits at age 65 from the BSPS2. The FCA explains in DISP App 4 that the starting assumption for a redress calculation should be that benefits would be taken at the normal retirement age of the DB scheme (which here was 65). It also explains what might make it reasonable to depart from that assumption. Taking tax-free cash from the new pension on its own, is said to be unlikely to be enough to depart from the starting assumption. But where a consumer has changed their working pattern at a similar time to taking regular benefits from the new pension, this would rebut the presumption. Mr E's representative has confirmed that he has begun working part time due to a health condition, he is unable to work full time and that he has begun drawing regular pension benefits to supplement his income. And I've seen evidence which shows he began taking an income from the pension in April 2020. It is only fair that I have regard for what has happened. And so, in his specific circumstances, I think it is fair to assume he'd have begun drawing benefits from his DB scheme pension around the same time as he took them from his personal pension.

Our Investigator recommended that LASL make a payment for the distress caused to Mr E. Mr E received advice from LASL in 2017. He first complained about that advice in late 2021, after speaking to his professional representative. I haven't seen anything that suggests the advice caused him ongoing distress during that period as the first indication he potentially had any concerns about the advice seems to have been when he first discussed matters with his representative. Nor can I see he's been caused any significant inconvenience in that time. And indeed, his representative has brought his complaint for him, so the impact of having to make a complaint – which I wouldn't usually recommend compensation for anyway – has also been reduced.

Nevertheless, I do accept Mr E may potentially have been worried to find that the advice might not have been suitable for him, particularly given the circumstances under which he first asked for this advice, when there was a lot of uncertainty regarding the pension scheme. I think finding out about this potential issue has likely caused him some concern. This wouldn't have occurred but for the advice that is the subject of this complaint. So, in the circumstances, I think the recommended award of £200 is fair and reasonable.

Putting things right

A fair and reasonable outcome would be for LASL to put Mr E, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr E would have most likely remained in the occupational pension scheme and opted into 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 E and his representative and the Financial Ombudsman Service upon completion of the calculation together with supporting evidence of what LASL based the inputs into the calculator on.

For clarity, although Mr E has confirmed he still works part time, he began drawing pension benefits from April 2020. And I think compensation here should be based on him taking benefits at that point.

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 E's acceptance of the 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 E redress as a cash lump sum payment,
- explain to Mr E before starting the redress calculation that:
    - the redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
    - a straightforward way to invest the redress prudently is to use it to augment his DC pension
- offer to calculate how much of any redress Mr E receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr E accepts LASL's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr E 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 E's end of year tax position.

Redress paid to Mr E as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, 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 E'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.

I've thought about Mr E's representative's point regarding this deduction. 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 E back into the scheme as if the transfer out hadn't happened. So, overall, I remain of the view that the redress proposed fairly compensates Mr E for the impact of the unsuitable advice he received.

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

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 18 January 2024.

Ben Stoker
Ombudsman