

## **The complaint**

Mr G complains about the advice given by Acumen Independent Financial Planning Limited ('Acumen') to transfer the benefits he held in the British Steel Pension Scheme ('BSPS') to a personal pension. The BSPS is a defined benefit ('DB') occupational pension scheme. Mr G thinks the advice was unsuitable for him.

## **What happened**

In March 2016, Mr G'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.

I can see that Mr G emailed Acumen in July 2017 saying he was a member of the BSPS and was considering his options. The email said he was thinking of transferring from the scheme and moving his benefits to the pension provider that was operating a new defined contribution pension scheme that had been established by his employer. But before making a decision he wanted advice, so was enquiring if Acumen provided this service. Acumen confirmed that it did.

In September 2017, the BSPS provided Mr G with a summary of the transfer value of his scheme benefits. This said his benefits had a cash equivalent transfer value ('CETV') of £216,914.27. And in October 2017, members of the BSPS were sent a "Time to Choose" letter which gave them the options to either stay in BSPS and move with it to the PPF, move to the BSPS2 or transfer their BSPS benefits elsewhere.

Acumen completed a fact-find to gather information about Mr G's circumstances and objectives. It recorded that he was 36, in good health, employed full time, married with one dependent child. He owned his own home, with an outstanding mortgage of £104,000 and a remaining term of 24 years. Mr G also owned another property that he rented out. This had a buy-to-let mortgage on an interest only basis. And it noted Mr G had a personal loan for approximately £10,000. And there was no suggestion that Mr G's household income was not sufficient to meet its outgoings.

In addition to the benefits held in the BSPS, Mr G was also a member of his employer's new defined contribution pension scheme. That pension had only recently begun and the BSPS benefits made up the significant majority of his retirement provisions at that time.

Acumen recorded that Mr G was considering transferring as he wanted control of his pension, the option of the full pension being available to his beneficiaries in the event of his death and flexibility as he wanted to retire at age 58. It said he was aware he would be giving up a guaranteed income and had contacted Acumen because he'd already decided to transfer.

Acumen also carried out an assessment of Mr G's attitude to risk, which it deemed to be

'high medium'.

There were further emails between Mr G and Acumen where Mr G indicated he'd contacted a different financial adviser. And Mr G has confirmed he was in discussion with a different adviser about his pension. But that other adviser was unable to provide advice. So, Mr G went back to Acumen and asked for advice.

On 8 December 2017 Acumen advised Mr G to transfer his pension benefits from the BSPS into a personal pension. The suitability report said the reasons for this recommendation were that by transferring benefits could be taken from age 55, 25% of the fund could be taken as tax-free cash ('TFC'), Mr G would have much greater freedom and flexibility in terms of how he accessed his benefits, a personal pension offered greater lump sum death benefits and his desired level of income would still be sustainable. It said Acumen had assumed from Mr G's desire to live on a lower level of income in retirement that control, flexibility and better death benefits were a greater priority to him than the guaranteed income offered by the DB scheme, which may have been higher. And so, it felt transferring was suitable. Acumen would also provide ongoing monitoring and servicing of the pension, at a cost.

The transfer went ahead in line with Acumen's recommendation. Acumen provided ongoing servicing until 2021.

Mr G complained to Acumen in 2021 about the suitability of the transfer advice. He said he'd received a notification from the regulator, the Financial Conduct Authority ('FCA'), that some members of the BSPS may have received unsuitable advice to transfer their benefits. Mr G said he now felt the advice he had received was unsuitable.

Acumen didn't uphold Mr G's complaint. It noted Mr G had approached it and indicated he was looking to transfer his pension. Acumen said it felt it had taken reasonable steps to ensure that the advice it provided was suitable and that Mr G had made an informed decision to transfer. It also said, at the time of the advice, the BSPS2 was not confirmed so it couldn't have reasonably recommended joining it. And so, it felt the advice to transfer was suitable given Mr G's noted goals.

Mr G referred his complaint to our service. An investigator upheld the complaint and required Acumen to pay compensation and £300 for the distress caused. He thought Mr G was always likely to be worse off as a result of transferring. And he didn't feel that he necessarily needed to transfer to meet his apparent objectives or that achieving those other goals made transferring in his best interests. While Mr G had approached Acumen, the Investigator didn't agree that he would've disregarded its advice. And he thought Mr G should've been advised to join the BSPS2

Acumen didn't agree. It responded, via a professional representative, saying the Investigator had assessed the case on the wrong basis. It said it wasn't required to guarantee that the transfer would be suitable for Mr G, particularly when viewed with hindsight which Acumen felt the Investigator had unfairly used. Instead, it was simply required to take reasonable steps to ensure the advice was suitable for Mr G at the time.

Acumen said the Investigator had placed too much weight on the critical yields and discount rate and that these were unreliable and largely irrelevant as Mr G didn't indicate an intention at any stage to take an annuity. Acumen also said Mr G had made a fully informed decision to proceed with the transfer.

It also maintained that the BSPS2 was not a confirmed option at the time of the advice so it said this couldn't have been recommended. And, because it was uncertain the BSPS2 would happen, it felt Mr G would not have agreed to this recommendation because there was still

the possibility of entering the PPF. And Acumen said Mr G was against this, not least because of what the consultation documents from his employer had said about it being a negative outcome. Acumen also said it felt Mr G would've transferred his benefits even if it had advised him not to so didn't think its advice had caused any loss.

The Investigator wasn't persuaded to change their opinion. He reaffirmed that he was required to look at whether the transfer was in Mr G's best interest. And he didn't think it was as the transfer involved taking additional risk, which was always likely to result in Mr G receiving lower retirement benefits, to meet apparent objectives, such as early retirement, that were not definitely decided and could've been achieved anyway without transferring.

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.

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 Business ('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 Acumen'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.

Acumen says that its adviser was only required to take reasonable steps to ensure the advice was suitable for Mr G. I agree that under the FCA's Conduct of Business Sourcebook ('COBS') Acumen was required to take reasonable steps to ensure that its personal recommendation to Mr G was suitable for him (COBS 9.2.1). However, as I've mentioned above, additional regulations apply to advising on transferring out of DB schemes. These additional regulations say that 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 G's best interests (COBS

19.1.6). So, I'm satisfied, as Acumen was advising on transferring out of a DB scheme, it was required to clearly demonstrate that doing so was in Mr G's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests. I'll explain why.

#### *Financial viability*

Acumen has provided copies of two transfer value analysis ('TVAS') reports which it instructed – as obtaining a TVAS was required by the regulator. Both of these reports, carried out eight days apart, showed how much Mr G's pension fund would need to grow by each year if invested in a personal pension in order to provide the same benefits as his DB scheme (the critical yield).

All of the calculations were based on Mr G retiring at age 65. Acumen has said though that Mr G intended to retire at age 58. This was referred to in the suitability report and indeed relied on as a reason that transferring was suitable – to give Mr G added flexibility to retire at that age. I'll come back to whether this was a genuine objective later. But, based on Acumen relying on this objective, I'd have expected the TVAS to include comparisons (particularly critical yields) for retiring at that age to illustrate the value of the DB scheme benefits.

The calculations of the critical yields also only account for Mr G taking a full pension at age 65, with none calculated for what return would be needed if he chose to draw tax-free cash. The suitability report said one of the reasons for the recommendation was that the personal pension allowed 25% to be taken as tax-free cash. Indicating this was something that Acumen believed Mr G would be interested in. So again, I'd have expected to see a comparison to that scenario.

The critical yield figures also appear to have been based on matching Mr G's existing scheme, the BPS, based on the revaluation assumptions noted. But Mr G didn't have the option to remain in the BPS – he either needed to opt into the BPS2 or move with the scheme to the PPF. But while a critical yield was calculated in respect of moving to the PPF, there was no comparison to the BPS2.

Acumen has strongly argued that BPS2 may not have gone ahead. But I think Acumen is overstating the chance of the BPS2 not happening. The restructuring of BPS had been ongoing for a significant amount of time by the point Acumen instructed the TVAS reports and provided Mr G advice. Mr G's employer had agreed actions with the pension's regulator, and these had been carried out as scheduled – not least a lump sum payment into the BPS which enabled the provision of improved transfer value quotations in September 2017. Mr G had also received his "time to choose" pack – with joining the new scheme one of the options. And details of the new scheme had been provided; the BPS2 would've offered the same income benefits as the BPS but the annual increases would've been lower. So, based on what had happened to that point, I think the relevant parties, not least the trustees, were confident at that point that the BPS2 would go ahead. Of course, it's possible it may not have gone ahead. But given it appeared likely to proceed I still think the benefits available to Mr G through the BPS2 should've been factored into the TVAS reports and subsequent advice so that he was able to make an informed decision.

Given what I've said above, there are issues with how useful a comparison the TVAS reports in fact provided. Nevertheless, I've considered the reports when looking at whether the transfer was in Mr G's interests from a financial viability perspective.

The TVAS reports gave differing figures for the critical yields. For matching the full pension the BPS would've provided at age 65 one report said the critical yield was 6.1% with the other saying 6.5%. And for matching the full pension the PPF would provide at age 65 the

reports gave a critical yield of 4.3% and 4.7% respectively. I note that the suitability report referred to the higher of each, so these appear to have been assumed as the more accurate. Again, the critical yields applicable to the BPS2 benefits were not calculated – although I think they should have been. The lower annual increases under the BPS2 would've likely decreased the critical yields somewhat in comparison to the BPS. But I still think they would've likely been higher than those reflecting the PPF benefits and are likely to have been closer to those of the BPS benefits, particularly at age 65.

Acumen says the critical yield is of limited relevance and can be unreliable. And it says Mr G didn't want to purchase an annuity – so the critical yield is even less relevant here. But Mr G was only 36 at the time of the advice so it was approximately 20 years at least until he'd likely be able to take benefits in any form from the pension. In that time his circumstances or plans could very well have changed. And it was entirely possible that when he did retire he may have wanted greater guarantees for his income. In any event though, the regulator required Acumen to consider the rate of investment growth that would have to be achieved to replicate the benefits being given up. So, I do think an analysis of the critical yield is a relevant consideration here.

The advice was given after the regulator gave instructions in Final Guidance FG17/9 as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published by the Financial Ombudsman Service on our website. Acumen says that referring to the discount rate was not required by the regulator when giving advice. So, has suggested our Service is wrong to take this into account. But I think it 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. The discount rate would be considered a reasonable assumption of likely returns. And businesses were free to refer to it. So, whilst I agree businesses weren't *required* to refer to these rates when giving advice on pension transfers, they are able to do so and I consider they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor.

The relevant discount rate closest to when the advice was given which I can refer to was published by the Financial Ombudsman Service for the period before 1 October 2017 and was 4.7% per year for 28 years to retirement (which would be the case if Mr G retired at age 65). I've kept in mind that the regulator's projection rates had also remained unchanged since 2014: the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.

I'd also note that, as part of a risk profile report produced by Acumen, it set out a target asset allocation that it felt would be suitable given Mr G's attitude to risk. And the report said that the estimated annual potential growth rates for that target portfolio were 3.11%.

I've taken all of this into account, along with the composition of assets in the discount rate, the 'high medium' attitude to risk Acumen said Mr G had and also the term to retirement. There would be little point in Mr G giving up the guarantees available to him through a DB scheme only to achieve, at best, the same level of benefits outside the scheme. And here, I think Mr G was always likely to receive benefits of a lower overall value at age 65 as a result of transferring and investing in line with his attitude to risk than those he would've been due under the BPS2. And in respect of the PPF it also appears he was unlikely to improve on the guaranteed benefits he'd have been due. And on balance, particularly considering the estimated potential growth rates for the chosen portfolio, it looks more likely that he would have also been worse off in comparison.

As I've said, the TVAS reports did not include a calculation of the critical yield required to match what Mr G could take at 58. But in my experience, critical yield figures in relation to the BSPS2 tend to be slightly higher for early retirement. And in respect of the PPF broadly the same (although they are usually higher in the event of taking TFC at early retirement). The discount rate applicable for 21 full years to retirement, which would've been the case Mr G retired at age 58, was also lower, 4.5%. So, on balance, I think Mr G was more likely than not to also receive benefits of a lower overall value at age 58 by transferring and investing in line with his attitude to risk, in comparison to what he could've obtained under the PPF or the BSPS2.

So, from a financial viability perspective, I don't think a transfer was in Mr G's best interests. Acumen has made the point that in the suitability report it said the critical yields were unlikely to be achievable. But Mr G accepted the risks involved and there were other considerations that meant the transfer was suitable, despite providing overall lower benefits. I've considered this below. But I would just note that making Mr G aware of this risk doesn't mean it was suitable advice to recommend that he take it.

### *Flexibility*

Acumen said one of Mr G's objectives and one of the reasons for the recommendation was that he wanted additional flexibility in how he could take his benefits to best meet his objectives.

Acumen says Mr G wanted to retire at age 58. But Mr G says while he was obviously interested in retiring early if there was the option of doing so, he didn't have any firm plans around this. I also note that the suitability report Acumen issued said Mr G was *"looking to retire around the age of 58 although this may change in the future"*. To me, this indicates that Mr G's plans were not finalised – and I wouldn't necessarily have expected them to be, given how long he had until retirement. I'd also note, under both the BSPS2 and the PPF, there was the option to take benefits early.

The suitability report also included a section about income requirements. In this, it was indicated that Mr G may look to draw tax-free cash from his pension in stages. And an "income modeller" was produced on this basis. But the fact find documents from the point of sale don't reflect there having been a conversation about this. And again, given how far off retirement was, I don't think Mr G likely had a definitive plan in relation to how he'd draw his benefits.

The same section of the suitability report included a line *"assuming you desired level of income is £1,250..."* Acumen has suggested that this was Mr G's target income. And that he needed to take his pension benefits flexibly to achieve this and that he could do so until his mid-nineties. But that figure also doesn't appear to have been recorded in any of the fact-finding documents from the time. So, it is unclear where that estimate has come from and how genuine it was.

Mr G could not take his DB scheme benefits flexibly. Although he could choose to take TFC and a reduced annual pension, Mr G had to take those benefits at the same time. But I'm not persuaded that Mr G had any concrete need to take TFC and defer taking his income, or to vary his income throughout retirement. To my mind this seems more of a 'nice to have' rather than a genuine objective.

I'm also not sure that Mr G necessarily needed to transfer to meet the recorded income objective anyway, if this was correct. Even though Acumen says Mr G was looking to retire at age 58, no information was recorded about the benefits he could take under the DB scheme at that time. But I understand under both the BSPS2 and the PPF, Mr G could've

taken benefits earlier than the normal scheme retirement age – subject to an actuarial reduction to account for the benefits being paid for longer. The details of what Mr G would've been due under the BSPS2 were again not calculated, although I think they should have been. The TVAS reports though both said that under the PPF Mr G was estimated to be entitled to an annual pension of £13,200.24 from age 65. That would've been reduced further if he retired at age 58 and would not have provided an income of £15,000 per year (£1,250 per month) on its own.

But Mr G was a member of the new defined contribution pension scheme his employer had put in place after the BSPS had closed. And, while worried about what had happened with his BSPS pension, I haven't seen any suggestion he intended to change employer prior to retirement. It was over 21 years until he was apparently considering retirement. He and his employer's contributions to this new scheme were equivalent to 16% of his salary. Before even accounting for increases in salary, investment growth or Mr G increasing his contributions, by age 58 this fund was likely to be worth in excess of £100,000. And this fund could've potentially been used flexibly from age 58, to meet Mr G's initial needs – either by meeting them in full and allowing him to draw his DB scheme benefits as close to the normal retirement date as possible to reduce the impact of the actuarial reduction or in conjunction with a reduced, but guaranteed, income from the DB scheme, with his state pension entitlement later providing additional income.

Furthermore, given what I've already explained about the likelihood of Mr G's overall pension benefits being lower as a result of transferring, I think opting into the BSPS2 (the benefits under which were guaranteed and escalated) would've been more in his interests than relying on investment performance.

Taking all of this into account, given the time until he was intending to retire, I don't think Mr G's plans or needs were known and certainly were not finalised. So, I don't think he had a need for flexibility at the time of the advice. And I don't think it was a suitable recommendation for Mr G to give up his guaranteed benefits when he did. If Mr G later had reason to transfer out of his DB scheme I understand that this would've been allowed under BSPS2. And he could've done so closer to retirement.

### *Death benefits*

Acumen says Mr G was keen to be able to leave his DB scheme benefits as a lump sum to both his wife and his son, in the event he died.

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 G. But whilst I appreciate death benefits are important to consumers, and Mr G 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 G about what was best for his retirement provisions.

A pension is primarily designed to provide income in retirement. And I don't think Acumen explored to what extent Mr G was prepared to accept a lower retirement income in exchange for higher death benefits. The suitability report said Acumen assumed this was of a higher priority to Mr G than a higher guaranteed income. But I don't think that was a reasonable assumption.

I also think the existing death benefits attached to the DB scheme were underplayed. Mr G was married and so the spouse's pension provided by the DB scheme would've been useful to his spouse if Mr G predeceased her. I don't think Acumen placed sufficient emphasis on the value of this benefit. And 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 lump sum the personal pension would provide would've also been reduced by any income Mr G drew in his lifetime. The CETV may have appealed to him as a lump sum. But Mr G was recorded as being in good health, so there wasn't anything to suggest he was unlikely to reach at least his average life expectancy. While Acumen has provided income modellers to show that Mr G could potentially have had a larger sum available at the point he reached his life expectancy, if he stuck to a defined pattern of withdrawals, the expected growth rate in those models was 6.2%. Significantly above the discount rate (4.7%) and the estimated annual potential growth rates for the target portfolio (3.11%) from the risk profile report Acumen produced. So, it appears unlikely to be achieved. And therefore it is more likely that the value of Mr G's pension was likely to be significantly reduced by the time it was passed on. So, it was unlikely to provide the legacy Mr G may have believed it would. In any event, Acumen should not have encouraged Mr G to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

The fact find also recorded that Mr G had death in service benefits from his current employer, which appear to have been a more appropriate method by which to leave a legacy. The new defined contribution pension he was contributing to also provided alternative forms of death benefit to his DB scheme. And, if Mr G didn't think these were enough and genuinely wanted to leave a further legacy, which didn't depend on investment returns or how much of his pension fund remained on his death, I think Acumen should've instead explored life insurance. Which I can't see that it did.

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 G.

#### *Control and concerns over financial stability of the DB scheme*

Acumen says Mr G wanted control of his pension. But I think this objective was more linked to the uncertainty about the BSPS and his concerns about how his employer had handled the scheme. I haven't seen anything to suggest Mr G was an experienced investor. And I cannot see that he had an interest in or the knowledge to be able to manage his pension funds on his own. So, I think this desire for control has been overstated somewhat and I don't think that this was a genuine objective for Mr G – rather it was a consequence of transferring away from the BSPS.

I don't doubt that Mr G, 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 G may have been worried about his pension moving to the PPF or that he'd heard negative things about this potential outcome. I also accept that, due to this, Mr G was also leaning towards the decision to transfer because of the concerns he had about his employer and his negative perception of the PPF – as his initial email to Acumen indicates. However, it was Acumen's obligation to give Mr G an objective picture and recommend what was in his best interests.

As I've explained, by this point details of BSPS2 were known and it seemed likely it was going ahead. The "Time to Choose" paperwork was clear that opting into that scheme was an option – so, I'm satisfied it was envisaged that this would go ahead. And I think this should've alleviated some of Mr G's concerns about the scheme moving to the PPF.

But even if there was a chance the BSPS2 wouldn't go ahead, I think that Acumen should've reassured Mr G that the scheme moving to the PPF wasn't as concerning as he thought. He didn't have firm retirement plans. But, as I've explained, it appears likely his other provisions, in conjunction with the pension payable under the PPF, would've provided the retirement



income which Acumen recorded that he was likely to need. And he was unlikely to be able to exceed this by transferring out. And although the increases in payment in the PPF were lower, the income was still guaranteed and was not subject to any investment risk. So, I don't think that Mr G's concerns should've led to Acumen recommending he transfer out of the DB scheme altogether.

### *Summary*

I don't doubt that the flexibility, control and potential for higher death benefits on offer through a personal pension would have sounded like attractive features to Mr G. And I'm satisfied he may well have gone into the discussion believing that transferring might've been a good idea. But Acumen wasn't there to just transact what Mr G might have thought he wanted. The adviser's role was to really understand what Mr G needed and recommend what was in his interests.

Ultimately, I don't think the advice given to Mr G was suitable. He was giving up a guaranteed, risk-free and increasing income within the BSPS2 (or the PPF). By transferring to a personal pension Mr G was, in my view, likely to obtain lower retirement benefits. And I don't think there were any other particular reasons which would justify the transfer and outweigh this. So, I don't think it was in Mr G's best interests for him to transfer his DB scheme to a personal pension when he had the opportunity of opting into the BSPS2. I appreciate that the BSPS2 hadn't been confirmed when the advice was given, but while I know Acumen has disagreed, I think it was clear to all parties that it was likely to be going ahead.

Mr G had over 20 years before he expected to retire, and he didn't know what his needs in retirement would likely be. 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 be offset by the more favourable reduction for very early retirement. And by opting into the BSPS2, Mr G would've retained the ability to transfer out of the scheme nearer to his retirement age if he needed to. Also, Mr G was married, and his wife'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 G had chosen to take a lump sum. The annual indexation of his pension when in payment was also more advantageous under the BSPS2. So, I think Acumen should've advised Mr G to opt into the BSPS2.

Of course, I have to consider whether Mr G would've gone ahead anyway, against Acumen's advice. Acumen says Mr G made an informed decision to transfer, so it thinks he would've chosen to do so even if it had advised him against it.

As I've already mentioned, I have seen that Mr G indicated when he first contact Acumen that he was considering transferring his pension benefits. But he was also clear that he needed advice. Given the size of his pension pot it was a requirement Mr G took advice before transferring. But I'm satisfied here, he, as an inexperienced investor, was genuinely seeking the opinion of Acumen as a professional adviser.

I accept that Acumen disclosed the risks of transferring to Mr G, and provided him with a significant amount of information in the suitability report. But ultimately it advised Mr G to transfer his benefits, and I think Mr G relied on that advice.

I'm not persuaded that Mr G would've insisted on transferring, against Acumen's advice. Again, Mr G was an inexperienced investor and this pension accounted for the majority of his retirement provision at the time. So, if Acumen 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. And I'm not persuaded that Mr G's concerns about the issues with the

BSPS or potentially joining the PPF 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. And if Acumen had explained Mr G was unlikely to exceed the benefits available to him through the PPF if he transferred out, and that he could likely meet his apparent income needs in retirement without risking his guaranteed pension, I think that would've carried significant weight. So, I don't think he'd have gone against the advice.

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

Our Investigator recommended that Acumen also pay Mr G £300 for the distress caused by the unsuitable advice. I don't doubt that Mr G 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 in respect of this is fair.

### **Putting things right**

A fair and reasonable outcome would be for the business to put Mr G, as far as possible, into the position he would now be in but for Acumen's unsuitable advice. I consider Mr G would have most likely opted to join the BSPS2, rather than transfer to the personal pension if he'd been given suitable advice. So, Acumen should use the benefits offered by BSPS2 for comparison purposes.

On 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance and has set out its proposals in a consultation document - [CP22/15-calculating redress for non-compliant pension transfer advice](#). The consultation closed on 27 September 2022 with any changes expected to be implemented in early 2023.

In this consultation, the FCA has said that it considers that the current redress methodology in [Finalised Guidance \(FG\) 17/9](#) (Guidance for firms on how to calculate redress for unsuitable defined benefit pension transfers) remains appropriate and fundamental changes are not necessary. However, its review has identified some areas where the FCA considers it could improve or clarify the methodology to ensure it continues to provide appropriate redress.

The FCA has said that it expects firms to continue to calculate and offer compensation to their customers using the existing guidance in FG 17/9 whilst the consultation takes place. But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with any new rules and guidance that may come into force after the consultation has concluded.

We've previously asked Mr G whether he preferred any redress to be calculated now in line with current guidance or to wait for any new guidance / rules to be published. He didn't make a choice, so as set out previously I've assumed in this case he doesn't want to wait for any new guidance.

I am satisfied that a calculation in line with FG17/9 remains appropriate and, if a loss is identified, will provide fair redress for Mr G.

Acumen must therefore undertake a redress calculation in line with the regulator's pension review guidance as updated by the Financial Conduct Authority in its Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers.

For clarity, Mr G has not yet retired, and he has no plans to do so at present. So, compensation should be based on his normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

This calculation should be carried out as at the date of my final decision and using the most recent financial assumptions at the date of that decision. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr G's acceptance of the decision.

Acumen may wish to contact the Department for Work and Pensions (DWP) to obtain Mr G's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P). These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the occupational scheme on Mr G's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr G's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr G as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to his likely income tax rate in retirement - presumed to be 20%. So, making a notional deduction of 15% overall from the loss adequately reflects this.

The payment resulting from all the steps above is the 'compensation amount'. This amount must where possible be paid to Mr G within 90 days of the date Acumen receives notification of his acceptance of my final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes Acumen to pay Mr G.

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above - and so any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90 day period in which interest won't apply.

If the complaint hasn't been settled in full and final settlement by the time any new guidance or rules come into effect, I'd expect Acumen to carry out a calculation in line with the updated rules and / or guidance in any event.

In addition, Acumen should pay Mr G £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**

Determination and money award: I uphold this complaint and require Acumen Independent Financial Planning Limited to pay Mr G the compensation amount as set out in the steps above, up to a maximum of £160,000.

Where the compensation amount does not exceed £160,000, I would additionally require Acumen Independent Financial Planning Limited to pay Mr G any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I would only require Acumen Independent Financial Planning Limited to pay Mr G any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Acumen Independent Financial Planning Limited pays Mr G the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr G.

If Mr G accepts this decision, the money award becomes binding on Acumen Independent Financial Planning Limited.

My recommendation would not be binding. Further, it's unlikely that Mr G can accept my decision and go to court to ask for the balance. Mr G 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 G to accept or reject my decision before 20 December 2022.

Ben Stoker  
**Ombudsman**