

The complaint

Mr S 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 was a defined benefit ('DB') occupational pension scheme. Mr S says the advice was unsuitable for him.

Both Mr S and Acumen are being represented by third parties. But, for ease of reading this decision, I'll largely refer to representations as just being made by Mr S and Acumen.

What happened

In March 2016, Mr S' employer announced that it would be examining options to restructure its business, including decoupling the BSPS (the employers' DB scheme) from the company. The consultation with members referred to possible outcomes regarding their preserved benefits, which included transferring the scheme to the Pension Protection Fund ('PPF'), or a new defined-benefit scheme ('BSPS2'). Alternatively, members were informed they could transfer their benefits to a private pension arrangement.

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 says Mr S first approached it for advice about his BSPS pension in November 2017. And on 7 November 2017, the BSPS provided Mr S with a summary of the transfer value of his scheme benefits. This said his benefits had a cash equivalent transfer value ('CETV') of £51,617.09.

Acumen completed a fact-find to gather information about Mr S' circumstances and objectives. It noted that he was 28, in good health, employed full time and single with no dependents. He owned his own home and held a mortgage on a repayment basis. Acumen recorded this was due to be repaid well in advance of Mr S reaching retirement. It was noted that he had death in service benefits from his employer. And in addition to the benefits held in the BSPS, Mr S was also a member of his employer's new defined contribution pension scheme, which had been set up in March 2017, with he and his employer making combined contributions equivalent to 16% of his salary.

Regarding immediate and future capital requirements, including those in retirement, Acumen recorded that there was "no point in discussing" these, given Mr S would not be able to access his pension benefits for approximately 30 years. It said Mr S was looking to transfer his pension for control and to have flexibility.

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

Around late December 2017, Acumen advised Mr S to transfer his pension benefits into a personal pension and invest across several managed funds. The suitability report said that in addition to the preferences recorded previously, Mr S hoped to retire at age 58 so wanted

flexibility and was prepared to give up a secure income to achieve this. And it said he was concerned that his existing pension wouldn't provide a legacy for his next of kin in its current form as he was single.

It noted that, although Mr S' attitude to risk had been established as 'high medium' it had been agreed that 'medium' or 5 on a scale of 1 to 10 was more accurate and that he had a small capacity for loss.

Acumen said it recommended the transfer because while invested Mr S' fund would benefit from growth, benefits could be taken from age 55, 25% of the fund could be taken as tax-free cash on retirement, Mr S would have a broad range of investment options, the lump sum death benefits were better than remaining in the DB scheme, he'd have much greater freedom and flexibility and his desired level of retirement income was considered to be sustainable. It went on to say that the critical yield, the annual rate of return required of a new pension that would allow Mr S to purchase equivalent benefits to those he was guaranteed under the DB scheme, was unlikely to be achievable. So, from an investment perspective the transfer may not be feasible. But Mr S' objective was to ensure his next of kin would have access to his pension and transferring achieved this objective.

The transfer went ahead in line with Acumen's recommendation. And I understand Acumen has continued to provide ongoing advice and servicing to Mr S in regards to the pension, for an annual fee.

Mr S complained to Acumen in 2021 that the advice he'd been given was not suitable based on his circumstances at the time and the new pension was unlikely to match the benefits it had recommended that he give up. So, Mr S felt he was likely to be worse off as a result of the advice.

Acumen didn't uphold Mr S' complaint. It said Mr S had obtained a CETV before contacting it and was looking to transfer his pension. Acumen said it felt it had taken reasonable steps to ensure that the advice it provided was suitable, which is what it believes was required of it, and that Mr S had made an informed decision to transfer. Acumen said it wasn't required to guarantee that the transfer would be suitable for Mr S when viewed with hindsight. And, based on the information from the time, it felt the recommendation was suitable, also noting that the BSPS2 was not guaranteed to go ahead when the advice was given.

Mr S referred his complaint to our service. An Investigator upheld the complaint and said Acumen should compensate him for any loss the DB transfer had led to and pay him a further £150 for the distress caused. He didn't think Mr S was likely to receive greater retirement benefits by transferring. He also thought some of the statements in the suitability report were misleading – in particular that the retirement income would be sustainable when this requirement was unknown. The Investigator didn't think Mr S had a need for flexibility or control at the time of the advice. And he didn't think transferring in order to achieve alternate death benefits was appropriate based on his circumstances. So, the Investigator thought Mr S should've been advised not to transfer. And if he had, felt he would've moved to the BSPS2.

Acumen didn't agree. It said it felt the Investigator had assessed the case on the wrong basis. It again said it wasn't required to guarantee that the transfer was suitable for Mr S, which it said was subjective anyway particularly with hindsight, which it thought had been unfairly applied. Rather it had to take reasonable steps to ensure the advice was suitable. Acumen also said the Investigator had placed too much weight on the critical yields and discount rate and said that it wasn't under any obligation to refer to the latter. Acumen felt Mr S had made a fully informed decision to proceed with the transfer, which hadn't been taken into account. And it felt Mr S would have always looked to transfer, even if Acumen had advised him not to. It also reiterated that the BPS2 was not a confirmed at the time of the advice, so felt this wasn't a genuine option for Mr S.

The Investigator wasn't persuaded to change their opinion. He said he was required to look at whether the transfer was in Mr S' best interests. And he didn't think it was, for the reasons he'd already explained. He also said he still thought an analysis of the critical yield was relevant. As Acumen didn't agree with the Investigator's opinion, the complaint has been passed to me to decide.

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 S. 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 S 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 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 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's suitability report said that by transferring Mr S would have a broad range of investment options and would benefit from growth. But in my view, this would only be in his best interests if he was likely to improve on the guaranteed benefits he was already entitled to.

Acumen has provided copies of two transfer value analysis ('TVAS') reports which it instructed – as obtaining a TVAS was required by the regulator. These reports, carried out a week apart, showed how much Mr 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 S retiring at age 65. Acumen has said though that Mr S intended to retire at age 58. And indeed, this was referred to in the suitability report as a reason to transfer as he'd have flexibility to retire early. 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 accounted for Mr S 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 again said one of the benefits of transferring was that 25% of the fund could be taken as tax-free cash. Even though I can't see that Mr S expressed a need or preference for tax-free cash, as the suitability report referenced it as a reason to transfer, I'd have expected to see a calculation of the returns needed to match the benefits the DB scheme would provide in that scenario.

The critical yield figures also appear to have been based on matching Mr S' existing scheme, the BSPS, based on the revaluation assumptions noted. But Mr S didn't have the option to remain in the BSPS – he either needed to opt into the BSPS2 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 with the BSPS2.

Acumen has said that the BSPS2 was not confirmed so was not a genuine option for Mr S. But I think Acumen is overstating the chance of the BSPS2 not happening. The restructuring of the BSPS had been ongoing for a significant amount of time by the point Acumen instructed advised Mr S. Mr 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 BSPS which enabled the provision of improved transfer value quotations. Mr S 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 – not least its revaluation rates. So, based on what had happened to that point, I think the relevant parties, not least the trustees, were confident the BSPS2 would go ahead. Of course, it's possible it may not have done. But given it appeared likely to proceed I still think the benefits available to Mr S through the BSPS2 should've been factored into the TVAS reports, and the relevant comparison figures this generated discussed in the 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 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 6.8% with the other saying 6.9%. And for matching the full pension the PPF would provide at age 65 the reports gave a critical yield of 5.2% and 5.7% respectively. The suitability report referred to the lower of each of the respective figures.

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 it says Mr S hadn't contemplated taking an annuity, making them even less relevant. But Mr S was only 28 at the time of the advice so it was approximately 30 years 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 36 years to retirement (which would be the case if Mr S 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 based on Mr S having a 'high medium' attitude to risk. This said that the estimated annual potential growth rates for that target portfolio were 3.13%. And that is notwithstanding that Mr S attitude to risk was later revised to 'medium' – so he was willing to take less risk.

I've taken all of this into account, along with the composition of assets in the discount rate, the 'medium' attitude to risk Acumen said Mr S had and also the term to retirement. There would be little point in Mr S 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 S 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 BSPS2. And this would be the case even if the scheme moved to the PPF.

So, based on the information that is available, from a financial viability perspective, I don't think a transfer was in Mr S' best interests. And Acumen acknowledged this to an extent in its suitability report when it suggested the critical yields were unlikely to be achievable. But it believes there were other considerations that meant the transfer was suitable, despite providing overall lower benefits. And it says Mr S was aware of the risk of receiving lower overall benefits and accepted this. Making Mr S aware of risk doesn't though mean it was suitable advice to recommend that he take those risks. And, as I'll go on to explain, I don't think the other considerations mentioned mean it was in his best interests to transfer.

Flexibility and income needs

Acumen says Mr S wanted flexibility in his pension benefits as it said he hoped to retire at age 58. But I don't think he had a genuine need for flexibility at the time the advice was given.

The BSPS2 and the PPF both allowed Mr S to take benefits at age 58 if he chose to do so. So, he didn't need to transfer in order to retire early.

The fact-find also noted that Acumen felt there was no-point discussing Mr S' income needs in retirement, based on how far off that was. I don't think it was unreasonable, given how long it was until he could retire, that these needs wouldn't be known. Nor do I think it was unreasonable for Mr S not to know whether he'd be looking to take tax free cash. But with these needs entirely unknown, I don't think it can be argued Mr S needed to transfer in order to achieve a specific level of income or to access tax-free cash.

I also think the statement in the suitability report that Mr S' *"desired level of income is sustainable beyond your life expectancy because of the combined value of your various sources of income in retirement"* is misleading – as I've seen no analysis to back this up, particularly as those needs are said to have been unknown.

Ultimately, Mr S was only 28 when Acumen advised him to transfer – at least 30 years from apparently when he intended to take any retirement benefits. I don't doubt he was interested in retiring early if possible – I think most consumers would be when asked. But I don't think his thoughts or plans were definitive at the time of the advice. So, I don't think he had a need for flexibility when he transferred his DB scheme. And I don't think it was a suitable recommendation, or in his best interests, for Mr S to give up his guaranteed benefits when he did – particularly bearing in mind it appears he was always unlikely to be able to match the benefits he'd be due under the DB scheme. And if Mr S later had reason to transfer out of his DB scheme I understand that this would've been allowed under BSPS2. So, he could've done so closer to retirement.

Death benefits

Acumen has said that one of Mr S' objectives was that his next of kin would have access to the full value of his pension fund.

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 might have been an attractive feature to Mr S. But whilst I appreciate death benefits are important to consumers, and Mr S 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 S 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 S was prepared to accept a lower retirement income in exchange for higher death benefits.

Mr S was single with no children at the time of the advice. So, the spouse's and dependent's pension offered by the DB scheme might've seemed to be of little use to him at the time. But Mr S was still young. And his situation could very well have changed in the years to come. So, the existing death benefits could've become of significantly greater use to him – in the event he married or had children. And these benefits were guaranteed, and they escalated.

And while the CETV figure would no doubt have appeared attractive as a potential lump sum, the sum remaining on death following a transfer, as well as being dependent on investment performance, would've also been reduced by any income Mr S drew in his lifetime. Mr S was recorded as being in good health and there was nothing to suggest he was unlikely to live until at least his average life expectancy. So, the fund could've been significantly depleted, and potentially utilised entirely, by the time Mr S reached his average life expectancy. And the pension may not therefore have provided the legacy that Mr S may have thought it would at the time of the advice.

The fact find also recorded that Mr S had death in service benefits from his employer, which appear, in my view, to have been a more appropriate method by which to leave a legacy to his next of kin. The new defined contribution pension he was a member of also provided alternative forms of death benefit to his DB scheme. And, if Mr S didn't think these were enough and genuinely wanted to leave a further legacy, life insurance was an option – which given his age and apparent good health appears likely to have been obtainable at a reasonable price. Acumen has provided notes from its adviser which says this was mentioned as an option. But they don't reflect why this was discounted. I also can't see that a quote was obtained or that any mention of the comparative cost of this was made in the suitability report. So, I don't think I can reasonably say this was sufficiently explored as a genuine alternative.

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 S.

Control and concerns over financial stability of the DB scheme

I think Mr S' desire for direct control over his pension benefits was overstated. Mr S was not 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. Indeed, the pension was invested in managed funds and Acumen continued to provide ongoing servicing and advice to Mr S. So, I don't think that this was a genuine objective for Mr S – it was simply a consequence of transferring away from the DB scheme. Rather, I think this objective was more linked to the uncertainty about the BPS.

I don't doubt Mr S, 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 it'd been made clear he would need to make a choice. I also don't doubt Mr S had likely heard negative things about what could happen, including entry into the PPF and this was why he said he might've indicated he preferred to have control over his pension fund. It's also quite possible that Mr S was also leaning towards the decision to transfer because of his concerns. But that was why it was even more important for Acumen to give Mr S an objective picture and recommend what was in his best interests.

Acumen has said that there was a loss of trust from Mr S in respect of his employer and there was scepticism about the new arrangements. But the BSPS2 pension trustees were to be separate from his employer. And by the time advice was given here details of the 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, and the features of the BSPS including the ongoing option of transferring at a later date, should've alleviated any concerns Mr S might've had about the scheme moving to the PPF.

But even if there was a chance the BSPS2 wouldn't go ahead, I think that Acumen should've reassured Mr S that the scheme moving to the PPF wasn't as concerning as he thought. The income available to Mr S through the PPF, while a reduction on what he'd have been due under the BSPS, was still guaranteed and not subject to investment risk. And he was unlikely to improve on the pension benefits the PPF would've provided by transferring out. And this guaranteed income would've given him a solid foundation for retirement, which he could build on through contributions to his employer's new pension arrangements. So, I don't think that any concerns Mr S might've had about the PPF should've led to Acumen recommending Mr S transfer out of the DB scheme altogether.

Summary

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

Ultimately, I don't think the advice given to Mr S was suitable. His needs in retirement were largely unknown. By transferring, he was giving up a guaranteed, risk-free and increasing income within the BSPS2 (or the PPF). And this action was irreversible. Mr S was also, in my view, always likely to obtain lower retirement benefits as a result of transferring. And I don't think there were any other reasons which justified the transfer and outweighed this – particularly given how far away from making any real decisions about retirement Mr S was. So, I don't think it was in Mr S' best interests for him to transfer his DB scheme to a personal pension, particularly 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 S had at least 30 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. I say this because while it is true the PPF would've provided a more favourable reduction for very early retirement, because his plans were not confirmed, there was no guarantee the reduction he accepted would end up being offset by this more favourable reduction.

By opting into the BSPS2, Mr S would've retained the ability to transfer out of the scheme nearer to his retirement age if he needed to. The annual indexation of his pension when in payment was also more advantageous under the BSPS2. So, I think if Acumen had correctly advised him against transferring Mr S would've opted into the BSPS2.

Of course, I have to consider whether Mr S would've gone ahead with a transfer anyway, against Acumen's advice. Acumen says he would've, as he made an informed decision.

I've considered this carefully. But I'm not persuaded that Mr S would've insisted on transferring out of the DB scheme, against Acumen's advice.

While Mr S had obtained a CETV before speaking to Acumen, he'd been told by that point about significant potential changes to the BSPS and that he'd have to make a choice. Obtaining a CETV allowed him to make an informed choice. But I don't think this means his mind was already made up.

I accept that Acumen disclosed the risks of transferring to Mr S and provided him with information about this in the suitability report. But providing information about risks isn't a substitute for suitable advice. And ultimately Acumen advised Mr S to transfer his benefits, and I think Mr S relied on that advice.

Ultimately Mr S 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 S' concerns about the consultation or the PPF, or the potential appeal of 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. And if Acumen had explained Mr S had no real reason to take on additional risk or give up the guarantees he was entitled to and that he was unlikely to exceed the benefits available to him through the BSPS2 or PPF if he transferred out, 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 S for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

Our Investigator recommended that Acumen also pay Mr S £150 for the distress caused by the unsuitable advice. I don't doubt that Mr S 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 S, as far as possible, into the position he would now be in but for Acumen's unsuitable advice. I consider Mr S 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 - <https://www.fca.org.uk/publication/consultation/cp22-15.pdf>

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.

A policy statement was published on 28 November 2022 which set out the new rules and guidance-<https://www.fca.org.uk/publication/policy/ps22-13.pdf>. The new rules will come into effect on 1 April 2023.

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 for the time being. But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with the new rules and guidance.

We've previously asked Mr S whether he preferred any redress to be calculated now in line with current guidance or to wait for the new guidance / rules to come into effect. He would like to wait and for his complaint to be settled in line with new guidance / rules. And I consider it is fair that Acumen honours this request and that it calculates redress in line with new guidance and rules as soon as those rules come into effect.

The basic objective of the amendments to the redress methodology still remains to put a consumer, as far as possible, into the position they would be in if the business had advised them to remain in the DB scheme. Having reviewed the FCA's consultation and policy statement, I'm satisfied that the changes still reflect a fair way to compensate Mr S.

So, Acumen must undertake a redress calculation in line with the updated methodology (rather than to calculate and pay any due compensation now in line with FG17/9). In accordance with the regulator's expectations, this calculation should be undertaken or submitted to an appropriate provider promptly once any new guidance / rules come into effect.

For clarity, Mr S 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.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr 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 S 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 compensation amount must where possible be paid to Mr S within 90 days of the date any changes to DB transfer redress guidance or new rules come into effect and Acumen has received notification of Mr S' acceptance of my decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date any changes to DB transfer redress guidance or new rules come into effect to the date of settlement for any time, in excess of 90 days, that it takes Acumen to pay Mr S.

Income tax may be payable on any interest paid. If Acumen deducts income tax from the interest, it should tell Mr S how much has been taken off. Acumen should give Mr S a tax deduction certificate in respect of interest if Mr S asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

In addition, Acumen should pay Mr S £150 for the distress caused by the disruption to his retirement planning. For clarity, I don't think this payment should be held back until the new guidance / rules are implemented and the calculation discussed above carried out. So, this £150 payment should be made separately, within 30 days of Acumen being notified of Mr S' acceptance of my decision.

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 S 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 S 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 S 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 S the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr S.

If Mr S 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 S can accept my decision and go to court to ask for the balance. Mr S 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 S to accept or reject my decision before 17 February 2023.

Ben Stoker
Ombudsman