The complaint

Mr R complains about the suitability of the advice provided by Acumen Independent Financial Planning Limited ("Acumen") in January 2018 to transfer the value of his safeguarded benefits in the British Steel Pension Scheme ("BSPS") to a personal pension plan ("PPP").

What happened

The events leading up to this complaint were set out in detail by our investigator in her assessment which she provided to both Mr R and Acumen. I don't intend to repeat here what our investigator stated but will instead provide a summary.

In March 2016, Mr R's former employer, Tata Steel UK Ltd ("Tata Steel"), announced that it would be examining options to restructure its business including decoupling the BSPS from the company. The BSPS was a defined benefits ("DB") pension scheme that provided a guaranteed lifetime income to members. The consultation with members referred to possible outcomes regarding their safeguarded 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 DB pension schemes when their employer becomes insolvent. Tata Steel closed the BSPS to further benefit accrual from 31 March 2017.

In May 2017, the PPF announced that the terms of a Regulated Apportionment Arrangement had been agreed – this was approved by The Pensions Regulator in August 2017. Under the announced plans, Tata Steel agreed to set up and sponsor a new DB pension scheme, the BSPS2, subject to certain conditions relating to funding and size being satisfied.

In October 2017, these changes were communicated to BSPS members, including Mr R, under the *'Time to Choose'* exercise. This explained that BSPS members had three options regarding their safeguarded benefits:

1. Transfer to the PPF;
2. Transfer to the BSPS2; or
3. Transfer to an alternative pension plan such as a PPP.

Members had to decide which option they wanted by 22 December 2017 – those that didn't choose an option remained in the BSPS and were ultimately transferred to the PPF. The details of Mr R's safeguarded benefits in the BSPS at that time were as follows:

- He had accrued 16 years and 6 months' qualifying service between September 2000 and March 2017;

- The scheme pension provided was based on his final salary, pensionable service and benefit accrual rate – as at the date of leaving the scheme in March 2017, his annual scheme pension was £8,573.90. The scheme pension comprised several elements, each part of which would be revalued by a prescribed amount over the term to the scheme normal retirement age of 65 and, once in payment, would escalate annually by a prescribed amount. The projected revalued pension payable at age 65 was £17,896.61;

- The revaluation and escalation rates were guaranteed in line with the BSPS rules;

- Payment of benefits before 65 would be subject to an early retirement reduction on a sliding scale – in simple terms, the earlier benefits were taken, the greater the reduction applied to the scheme pension. Broadly, this meant a 30% reduction would apply to the scheme pension if benefits were taken at 55 and a 18% reduction at 60;

- The cash equivalent transfer value of his safeguarded benefits was £226,574.65.

Mr R was concerned about what the announcement by Tata Steel meant for the security of his safeguarded benefits in the BSPS and wanted some financial advice. A different business advised him to transfer the value of his safeguarded benefits out of the BSPS. But that transaction was put on hold. This led to Mr R contacting Acumen. He met one of its advisers in January 2018. A fact find document and attitude to risk questionnaire were completed which recorded the following information about Mr R and his family:

- He was aged 34, in good health, married and had one financially dependent child aged 8;

- He was employed and was paid gross annual income of £43,500. He had been a member of his employer's defined contribution ("DC") pension scheme since June 2017. The total annual contribution in his DC plan was 16.6% of his income. He expected to receive a full State pension (at age 68);

- His wife was employed as a nurse and had been a member of the NHS Pension Scheme for about 13 years;

- Their assets comprised the marital home valued at £210,000 and about £3,000 in cash savings. He and his wife expected to receive total inheritances of about £100,000 at some point in the future;

- Their liabilities comprised a mortgage of £138,000 on the marital home which was due to be repaid in 22 years' time and a car loan of about £5,000;

- Their monthly outgoings were £1,200. He and his wife had surplus monthly income of around £1,000;

- He was an inexperienced investor. His risk profile was determined to be 6 on a scale of 1 to 10, where 1 was lowest risk and 10 highest risk. The rating of 6 was described as *'High Medium'* risk. His capacity for loss was recorded as *'Small'*;

Acumen recorded that Mr R had several objectives attached to his safeguarded benefits in the BSPS, summarised as follows:

- Making a decision regarding what to do with his safeguarded benefits;

- To retire at age 60 and be in receipt of a net monthly income of about £1,500 although this may change in the future; and

- To provide some form of legacy from his pension fund for his family.

In January 2018, Acumen issued its suitability report recommending that Mr R transfer the value of his safeguarded benefits in the BSPS to a PPP and invest it in different proportions in three of the provider's funds to align with his *'High Medium'* risk profile. It confirmed the reasons why it recommended a transfer to a PPP in favour of the PPF and BSPS2 options for the following reasons:

- *"While invested your fund will benefit from tax advantaged growth.*
- *Benefits can be taken at any time from age 55.*
- *25% of the uncrystallised pension fund can be taken as a Pension Commencement Lump Sum (tax free cash) payment.*
- *You have a broad range of investment opportunities offering enhanced flexibility.*
- *You will benefit from much greater freedom and flexibility regards accessing your pension benefits.*
- *Lump sum death benefits are better than can be provided from the 2 options put forward by British Steel.*
- *There will be no death benefit charge on an uncrystallised pension fund if death is before age 75 and the value of pension benefits is within the lifetime allowance.*
- *Your desired level of retirement income is sustainable beyond your life expectancy because of the combined value of your various sources of income in retirement. Namely, the new Personal Pension, the employer's group personal pension scheme with* [Mr R's employer] *and your State Pension."*

Mr R accepted the recommendation. The pension transfer was completed in April 2018. The costs associated with the recommendation were set out in Acumen's suitability report. These charges were to be deducted from Mr R's PPP, summarised as follows:

<u>Initial charges</u>

- £4,531.49 (or 2%) – initial adviser charge payable to Acumen

<u>Ongoing annual charges based on PPP fund value</u>

- 0.50% adviser charge – to provide ongoing advice payable to Acumen
- 0.35% product charge – payable to the PPP provider
- 0.65% fund charge – payable to the PPP provider

<u>This complaint</u>

In 2021, Mr R was contacted by the FCA regarding his pension transfer out of the BSPS. The FCA stated it was concerned that many former members of the BSPS had received unsuitable advice to transfer out and could be entitled to compensation. It encouraged Mr R to complain if he had any concerns. After receiving that letter from the FCA, Mr R complained to Acumen about the suitability of the pension transfer advice it had provided to him.

Acumen didn't uphold this complaint. In summary, it stated that it had complied with and considered the FCA's rules and guidance including making Mr R aware of the risks associated with the transaction. It was satisfied that the transfer was in his best interests taking into account his objectives and wider financial situation, including other sources of income and capital in retirement. Notwithstanding this point, it believed Mr R would've transferred anyway regardless of its advice because he had already started the process of transferring out before he met its adviser in January 2018.

One of our investigators considered this complaint and recommended that it be upheld. This was because she thought that Acumen's recommendation to transfer wasn't in Mr R's best interests and was therefore unsuitable. To put things right, our investigator recommended that Acumen carry out a redress calculation in line with the FCA's *'Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers'* on the basis that Mr R opted for the BSPS2 and would be a 20% income taxpayer in retirement. In addition, she recommended that Acumen pay Mr R £300 compensation for the trouble and upset caused by its unsuitable recommendation.

Mr R accepted our investigator's assessment and recommended remedy. Acumen didn't accept the outcome. It didn't provide any additional comments or evidence but simply requested that the matter be referred to an ombudsman for review.

While waiting for this complaint to be allocated to an ombudsman, our investigator contacted the parties in connection with the FCA's consultation launched on 2 August 2022 regarding new pension transfer redress guidance. The investigator asked Mr R to confirm that in the event this complaint is ultimately upheld, whether he preferred redress to be calculated on the current methodology or the updated guidance expected to be implemented in early 2023. The investigator told Mr R that if we didn't receive an answer that we'd assume he would prefer redress on the current methodology set out in *'Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers'.* As at the date of this final decision, Mr R didn't confirm which option he preferred.

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.

When considering what's fair and reasonable, and in accordance with the Financial Services and Markets Act 2000 and the Dispute Resolution section in the FCA's handbook, I need to take into account relevant: law and regulations; regulators' rules, guidance and standards, and codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

I'd like to clarify that the purpose of this final decision isn't to repeat or address every single point raised by Mr R and Acumen. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

<u>*The FCA's suitability rules and guidance*</u>

Acumen was authorised and regulated by the FCA at the time it provided its recommendation to Mr R. This meant that when it advised him it was required to follow the rules and consider the guidance in the Conduct of Business Sourcebook ("COBS") section in the FCA's Handbook. In assessing the suitability of Acumen's recommendation, it's necessary for me to have due regard to these rules and guidance.

Primarily, Acumen was required under COBS 2.1.1R to *"act honestly, fairly and professionally in accordance with the best interests of its client"* in its dealings with Mr R. The suitability rules and guidance that applied when Acumen provided its recommendation to Mr R were set out in COBS 9. The purpose of the rules and guidance are to ensure that businesses take reasonable steps to provide advice that is suitable for their clients' needs and to ensure they're not inappropriately exposed to a level of risk beyond their investment objectives and risk profile. To ensure that this is the case, and in line with the requirements in COBS 9.2.2R, the business must gather the necessary information for it to be confident its advice is suitable. Broadly speaking, this section of COBS 9 sets out the requirement for a regulated advisory business to undertake a "fact find" process.

There were also specific requirements and guidance relating to pension transfers involving safeguarded benefits, as was applicable to Mr R's case – these were contained in COBS 19.

COBS 19.1.2R required the following:

> *"A firm must:*
>
> *(1) compare the benefits likely (on reasonable assumptions) to be paid under a defined benefits pension scheme or other pension scheme with safeguarded benefits with the benefits afforded by a personal pension scheme, stakeholder pension scheme or other pension scheme with flexible benefits, before it advises a retail client to transfer out of a defined benefits pension scheme or other pension scheme with safeguarded benefits;*
>
> *(2) ensure that that comparison includes enough information for the client to be able to make an informed decision;*
>
> *(3) give the client a copy of the comparison, drawing the client's attention to the factors that do and do not* support *the firm's advice, in good time, and in any case no later than when the key features document is provided; and*
>
> *(4) take reasonable steps to ensure that the client understands the firm's comparison and its advice."*

Under the heading "Suitability", COBS 19.1.6G set out the following:

> *"When advising a retail client who is, or is eligible to be, a member of a defined benefits occupational pension scheme or other scheme with safeguarded benefits whether to transfer, convert or opt-out, a firm should start by assuming that a transfer, conversion or opt-out will not be suitable. A firm should only then consider a transfer, conversion or opt-out to be suitable if it can* ***clearly demonstrate, on contemporary evidence****, that the transfer, conversion or opt-out is in the client's best interests."* [my emphasis added]

COBS 19.1.7G also stated:

> *"When a firm advises a retail client on a pension transfer, pension conversion or pension opt-out, it should consider the client's attitude to risk including, where relevant, in relation to the rate of investment growth that would have to be achieved to replicate the benefits being given up."*

And COBS 19.1.8G stated that:

> *"When a firm prepares a suitability report it should include:*
>
> *(1) a summary of the advantages and disadvantages of its personal recommendation;*
>
> *(2) an analysis of the financial implications (if the recommendation is to opt-out); and*

(3) a summary of any other material information."

Businesses are required to follow these rules and consider the guidance because the FCA considers safeguarded benefits to be valuable. Based on the above regulatory rules and guidance, businesses advising on pension transfers should start by assuming that the existing DB pension scheme is suitable and to only recommend a transfer, which converts safeguarded benefits into flexible benefits, if it can clearly demonstrate it's in their client's best interests.

Mr R's situation

The situation for Mr R wasn't normal because the existing DB pension scheme, the BSPS, was closing. So he was essentially forced to transfer the value of his safeguarded benefits to a new scheme. He had three options:

1. Transfer to the PPF;
2. Transfer to the BSPS2; or
3. Transfer to an alternative pension plan such as a PPP.

It's undeniable that it was a period of great uncertainty for individuals such as Mr R. Many of these individuals were in a vulnerable position due to the uncertainty surrounding the future of the BSPS. I think the uncertainty only served to emphasise the need at that time for a balanced assessment of the options available and ultimately the provision of suitable advice. It's my view that any concerns Mr R had about the security of his safeguarded benefits should've been addressed and appropriately managed by the professional party in the transaction, Acumen.

Options 1 and 2 would've enabled Mr R to retain guaranteed pension income, albeit at a lower level than provided by the BSPS. There were differences between the PPF and the BSPS2. For deferred members below the scheme normal retirement age, like Mr R, the PPF would provide compensation based on 90% of their accrued pension at the scheme normal retirement age (in effect a 10% reduction in benefits). The BSPS2 didn't apply such a reduction. The BSPS2 also provided the potential for discretionary increases to the accrued pension, a higher level of spouse's pension and the option to transfer to an alternative pension to convert to flexible benefits at a later date when needs could be determined with greater accuracy than at 34 – the PPF didn't offer these additional features.

So while the situation was somewhat unusual, Mr R still had the option to retain guaranteed benefits in either the PPF or BSPS2. Due to his age and circumstances, it's my view Mr R would've been better off choosing the BSPS2 instead of the PPF based on what was known at that time. Given the FCA's view on safeguarded benefits, it's my fair and reasonable opinion that Acumen should've started its advice process by assuming the BSPS2 was suitable for Mr R and to only recommend a transfer to the PPP if it could clearly demonstrate it was in his best interests.

Acumen's advice to Mr R

In responding to this complaint, Acumen stated it had made Mr R aware of the risks associated with the pension transfer and made clear that, in its view, the critical yield figure (of 6.2%) was unlikely to be achieved meaning, from an economic point of view, he'd be worse off. But it nevertheless advised Mr R to transfer to achieve his objectives for flexibility and to leave a legacy for his family on death. Notwithstanding this point, it believed Mr R would've transferred anyway regardless of its advice because he had already started the process of transferring out before he met its adviser in January 2018 and so it was always his intention to transfer.

I recognise that there wasn't a perfect solution for Mr R. And that his safeguarded benefits was ultimately his money to do with as he saw fit. However, he was relying on Acumen to provide expert, balanced information and advice, taking into account all the information available to it at that time – so that he could then make an informed decision. I understand that there will be instances where a client seeks financial advice with preconceived notions or concerns about the financial health of an employer or DB pension scheme but, as the professional party, Acumen was tasked with rationally addressing those concerns and providing an appropriately balanced view of the available options.

In my view, disclosure of risks isn't the same as suitability. In other words, just because Acumen told Mr R that the critical yield was unlikely to be achieved doesn't absolve it from any responsibility for the suitability of the transaction. In my view, financial planning isn't simply about wish fulfilment and facilitating whatever course of action a client wishes to take. If an advising business considers a course of action to be unsuitable for their client, or otherwise not in their best interests, it has a choice not to facilitate the transaction.

Transfer value analysis

One of the key components in determining the suitability of a pension transfer is assessing the financial viability of the proposed transaction. The transfer value analysis system ("TVAS") rules applied at the time Acumen advised Mr R. This required it to carry out a transfer value analysis to calculate the 'critical yield' applicable to the proposed transfer. The critical yield is the annual rate of investment return required on the invested transfer value, after charges, to match the capitalised value of the benefits offered by the DB pension scheme on the assumption that the value of the alternative pension is used to secure a lifetime annuity at the scheme normal retirement age – the higher the critical yield, the less likely that the alternative pension will achieve sufficient investment growth to match the revalued pension payable by the DB pension scheme.

Acumen calculated the following critical yield figures:

Scheme	**Critical yield at age 65 based on taking full scheme pension**	**Estimated revalued annual scheme pension at 65**
BSPS	6.2%	£17,896.61
PPF	4.7%	£14,256.94

The critical yield figures for the BSPS2 weren't calculated. But it was known at the time Acumen advised Mr R that the BSPS2 would pay a higher level of benefits than the PPF but lower than the BSPS, so the critical yield figure and estimated annual pension for the BSPS2 at age 65 likely fell somewhere in between the figures above.

Acumen's recommendation to Mr R was provided to him after the FCA gave instructions in its *'Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers'* 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 on our website. While businesses weren't required to refer to these rates when giving advice on pension transfers, I consider they provide a useful indication of what growth rates would've been considered reasonably achievable when the advice was given in this case. The closest discount rate which I'm able to refer to and published by this service for the period before October 2017 is 4.6% based on

Mr R taking benefits at the BSPS normal retirement age of 65. Furthermore, the FCA's projection rate for pensions at the time was 8% per year for the upper rate, 5% per year for the middle rate and 2% per year for the lower rate.

In my view, the discount rate and FCA projection rates implied that Mr R would need to accept a high-risk investment approach to provide the potential for the sort of investment returns required over the investment timeframe to age 65 to exceed the critical yield of 6.2%. But that would only come with accepting the risk of significant investment loss. This is because the relationship between risk and reward is closely related.

I note that Mr R was recorded as having a 'High Medium' risk profile. The evidence I've seen indicates that he had very limited investment knowledge and experience before this pension transfer. At the time of Acumen's advice, he had £3,000 in cash savings and was a member of his then employer's DC pension scheme. There's no evidence that Mr R had experience of investing significant sums of money. Given the critical yields applicable in this case, I think that there was limited scope for the PPP to provide benefits that matched the relinquished benefits, let alone exceed them. And it seems that Acumen agrees because in its suitability report, when expressing its view on the critical yields, it stated, *"The critical yields are unlikely to be achievable and therefore if the assumptions are correct you may receive a lesser amount by transferring"* and *"From an investment perspective the transfer is likely not feasible".*

Of course, financial viability isn't the only consideration when giving pension transfer advice, as was set out in COBS 19.1.7B (G). A reasonable prospect of the critical yield being met or exceeded wouldn't necessarily mean that the transfer was suitable, and conversely, there might be other considerations which mean a pension transfer is suitable, despite providing overall lower benefits. I'll now go on to consider this.

Flexibility of pension benefits

It was recorded that Mr R wanted to retire at age 60 and receive net monthly income of about £1,500. It seems that this was to remain fixed and not increase to keep pace with or limit the impact of inflation.

In its suitability report, Acumen recorded that it recommended the pension transfer to a PPP to enable Mr R to flexibly access his safeguarded benefits. I think it's clear that Mr R was attracted to a flexible arrangement. But I'm not convinced, based on the evidence provided, that he had a genuine need to access his safeguarded benefits flexibly with varying levels of income and lump sums during retirement. The evidence indicates that when he retired that he'd likely require a steady, secure income stream for the rest of his life.

Mr R was 34 at the time and so about 26 years away from his preferred retirement age of 60. While I don't doubt he would've liked the flexibility to draw any level of benefit he wanted, plans can change over such a long period of time. An important point here is the fact that Mr R couldn't access the money until age 55 at the earliest. So I don't think there was any need to transfer his safeguarded benefits at that time, especially given the high critical yield attached to the transaction.

Acumen portrayed the PPP option in the suitability report as allowing for early retirement at age 60 without the "penalties" which would be applied to the PPF or BSPS2 options. The reality was of course that the PPP would've had less time to grow if accessed at 60 and any resulting income would need to last longer. I cannot see that this was explained to Mr R so that he could understand accessing any of the available options at age 60 would likely lead to reduced retirement income during his lifetime compared to taking benefits at age 65.

I think it would've been very difficult at age 34 to determine with any reasonable degree of certainty whether Mr R would be able to retire at age 60. But if I assume it was a realistic objective, it's my view that he could've achieved this by opting for the BSPS2 and drawing the scheme pension at 65 without penalty. I'll explain why.

I note that Mr R had been an active member of his employer's DC pension scheme since June 2017. He and his employer were, in total, contributing 16.6% of his gross annual salary of £43,500 into his DC pension plan, which was about £7,000 in monetary terms. This would increase in line with increases in his salary. In the event Mr R left that employment, I think it's likely that he'd find alternative employment and, with the legal requirements of auto-enrolment, would join a different DC pension scheme and pay a minimum of 8% of his earnings into it. So I think it's fair to say that over the 26-year period to age 60, it's likely that Mr R would build up significant DC pension savings.

So if Mr R did have a genuine need for flexible benefits from age 60, this could've been met in the first instance by using his significant DC pension savings. This course of action would've likely enabled Mr R to achieve his income and lump sum needs for the five-year period from age 60 until he could take unreduced benefits from the BSPS2 at 65. As noted above, the estimated revalued annual pension that would've been provided by the BSPS2 at age 65 was likely to be somewhere between £14,256.94 and £17,896.61. This would then be followed by the full state pension at 68. So, from 65 onwards, the majority of Mr R's core retirement income needs could've been met by guaranteed and escalating pensions which would've offered some inflation protection unlike the recommended PPP. And if it turned out the DC pension savings didn't provide adequate income for the *full* five-year period between 60 and 65, Mr R could've taken his benefits from BSPS2 at some point in between, meaning the early retirement factor wouldn't be as great as at age 60. Alternatively, he could've considered a transfer to a PPP at that time when his retirement income and lump sum needs could be determined with far greater accuracy than at 34.

Transferring to the PPP led to the investment, inflation and longevity risks associated with providing the retirement benefits moving from the DB pension scheme to Mr R. But I don't think he needed to take on these risks at that time for the reasons explained above.

The course of action recommended by Acumen led to Mr R concentrating the majority of his retirement benefits on a DC basis which offered no guarantees but was based entirely on investment performance. The alternative, blended approach I've suggested likely would've enabled Mr R to achieve the same objective but with significantly less risk. I haven't seen evidence that Acumen adequately considered and discounted this alternative course of action in meeting Mr R's early retirement and income objective. Acumen have made reference to Mrs R's NHS pension scheme income and the expectation that they would receive around £100,000 in inheritance upon which they could rely. But I don't think Mr R's access to his wife's scheme pension income or future inheritances made it suitable for him to relinquish the guarantees attached to his own safeguarded benefits.

The available evidence simply doesn't support the position as to why flexibility would've been a sufficiently compelling reason for Mr R to relinquish valuable benefit guarantees at that time.

In conclusion, while I understand Mr R's reasons and motivations for flexible benefits, I don't think Acumen clearly demonstrated why it was in his best interests to relinquish his safeguarded benefits at that time to achieve future flexibility. I simply don't agree the perceived advantage of flexibility and control of income outweighed the guaranteed benefits offered by the BSPS2.

Death benefits

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 recommended PPP offered flexible death benefits. Based on the applicable tax rules, if death occurred under 75 the benefits are paid free of income tax – after 75 the benefits are taxed at the beneficiary's marginal rate of income tax. It's fair to say that immediately following the transfer to the PPP and for the period until Mr R could draw any benefits from 55 onwards, the death benefits available would be significant (subject to investment performance) due to the simple fact he couldn't access and deplete the fund value for at least 21 years.

But Mr R was recorded as being in good health. So he could expect life expectancy into his late 70s or early 80s. There weren't any immediate health concerns that indicated a pension transfer was a suitable course of action at that time.

The value of Mr R's safeguarded benefits would represent a significant proportion of his retirement provision by the time he came to retire. Withdrawing money from the PPP to meet his income and lump sum needs from age 60 would likely mean that the size of the fund remaining in later years – when death is more likely – could be much smaller than expected.

The BSPS2 provided valuable guarantees. Mr R's wife would've received a guaranteed spouse's pension for life which would increase in payment and would've been valuable if Mr R predeceased her as well as a dependant's pension for their child.

If it was a genuine objective for Mr R to provide a lump sum on his death then life cover could've achieved the same objective of providing a lump sum to his wife while enabling him to maintain safeguarded benefits in the BSPS2. Pure life cover for a defined term is generally cheap and some cover may have been affordable for Mr R given he was 34, a non-smoker, in good health and had surplus monthly income of about £1,000. However, I cannot see evidence that Acumen adequately investigated the life cover option. For example, I haven't seen evidence that it quantified Mr R's death lump sum need, over what term, how this might change over time, how it might be met by other means or present personalised life cover quotes to enable him to make an informed decision.

It's my view that Mr R had no health issues at the time Acumen advised him which might reasonably have prompted him to relinquish the guarantees attached to his own retirement income for the sake of an enhanced safety net for his family. So I'm not convinced there was any real merit in Mr R transferring to a PPP at that time to provide a lump sum death benefit. There's no real evidence that a death lump sum was required for Mr R's wife rather than guaranteed income for life.

Mr R's concerns about the security of his safeguarded benefits

Given the level of uncertainty surrounding the BSPS at the time, I can understand that Mr R may have been concerned about the financial security of his safeguarded benefits. But, whatever happened, the majority of his benefits were secure.

The PPF was introduced by the government in 2005 as a 'lifeboat' scheme to protect members of DB pension schemes with the promise of providing a minimum level of benefits. The revaluation and escalation rates are set by law. Depending on his age on transfer to the PPF, Mr R could expect to receive a minimum of 90% of his scheme pension, although this would be affected by the revaluation and escalation rates under the PPF. This contrasted with the recommended PPP where there's no promise of a minimum level of benefits payable.

In its 2016/17 annual report, publicly available at the time of Acumen's recommendation, the PPF stated that its overall financial position as of 31 March 2017 remained robust, with an increase in its surplus funds to £6.1bn. There wasn't any reason at that time to question the financial viability of the PPF to provide benefits in the future.

Had Acumen advised Mr R to transfer to the BSPS2 he would've maintained safeguarded benefits and retained the option to transfer to a PPP at a later date, if then deemed suitable, when he could immediately access benefits and, crucially, determine his retirement income and lump sum needs with far greater accuracy than at 34. I think this is a key point.

A transfer to the BSPS2 would've also removed any immediate concerns Mr R had about the PPF. After all, the whole reason the BSPS2 was conceived was to provide a new long-term DB pension scheme for former members of the BSPS. And if it was the case, in the future, that the BSPS2 was at risk of being transferred to the PPF, then I think it likely that, similarly to the BSPS, members would be given the opportunity to transfer out to a PPP before any transfer to the PPF occurred. So I don't think that there was any immediate concern about options disappearing for Mr R or that there was an urgency to transfer to a PPP at that time to avoid a transfer to the PPF. In my view, Mr R was reliant on Acumen to provide a fair and balanced assessment of the BSPS2 and PPF and to act in his best interests in this regard. This ought to have involved discussing with Mr R the features, risks and benefits of those alternative options and allaying his misapprehensions.

If Mr R was concerned about his safeguarded benefits being transferred to the PPF which would result in him losing 10% of his scheme pension, then I question why he would accept the risk of transferring to a PPP which exposed him to unlimited downside risks where the loss could be significantly greater than 10%. This simply doesn't make sense to me and suggests that he didn't have the knowledge and experience to understand the features, risks and benefits of the PPF compared to the pension transfer. He was relying on Acumen to provide expert advice on this point, but I think it failed to do this. It's therefore my view that Acumen failed to adequately allay Mr R's misapprehensions and that he therefore made the decision to transfer from an uninformed position regarding the BSPS2 and PPF.

If properly informed, would Mr R have transferred anyway?

Based on the evidence I've seen, I'm not persuaded that a pension transfer was in Mr R's best interests and that Acumen's recommendation could therefore be regarded as suitable in the circumstances. So I think it's fair and reasonable to uphold this complaint.

In potential mitigation of Acumen's advice, I've also thought about whether Mr R, if placed in a fully informed position, would nevertheless have decided to transfer the value of his safeguarded benefits to a PPP. This was a complex transaction involving many factors which Mr R, as a layperson, wouldn't have been familiar. It's my view, given his lack of investment knowledge and experience, that he was heavily reliant on Acumen, as the professional party in the transaction, to take those factors into account and provide suitable, balanced advice. Given Mr R's reliance on Acumen to provide expert advice, I think it's unlikely, on balance, he would've transferred against its advice had it advised him to opt for the BSPS2.

Putting things right

A fair and reasonable outcome would be for Acumen to put Mr R, as far as possible, into the position he would now be in but for the unsuitable advice he was given. My view is aligned with that of our investigator in that, had Mr R been properly advised, he would've opted for the BSPS2 rather than the PPF. I'll explain why.

There were differences between the BSPS2 and PPF. These differences meant that the PPF was likely the better option for unmarried, deferred members who expected to retire early or take the maximum tax-free cash available even allowing for the 10% reduction in the starting entitlement. But the BSPS2 was likely the better option for married pensioners and deferred members who expected to draw benefits at or close to the scheme normal retirement age of 65. For the reasons set out above, I think it's likely that, properly advised, Mr R would've envisaged accessing his DC pension savings in the first instance between age 60 and 65 to meet any flexible income and lump sum needs before starting to take his safeguarded benefits at 65. In terms of death benefits, under the BPSP2 the spouse's pension would be set at 50% of her pension at the date of death, and this would be calculated as if no tax-free cash was taken at retirement. And so it's the benefits offered by the BSPS2 which should be used for comparison purposes.

As such, the calculation on the basis of entering the BSPS2 should be carried out using the most recent financial assumptions at the date of the actual calculation. This should be on the basis Mr R takes benefits at the scheme normal retirement age of 65.

FCA consultation

On 2 August 2022, the FCA launched a consultation on new DB pension transfer redress guidance and set out its proposals in a consultation document – CP22/15-calculating redress for non-compliant pension transfer advice**.**

In this consultation, the FCA stated that it considers the current redress methodology in Finalised Guidance (FG) 17/9 remains appropriate and fundamental changes aren't necessary. However, its review identified some areas where it 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 stated that it expects firms to continue to calculate and offer compensation to their customers using the existing guidance in FG 17/9 while 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 R whether he preferred any redress to be calculated now in line with current guidance or wait for the any new guidance and 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'm satisfied that a calculation in line with FG17/9 remains appropriate and, if a loss is identified, will provide fair redress for Mr R.

Acumen must therefore undertake a redress calculation in line with the FCA's pension review guidance as updated by it in its *'Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers'*. This calculation should be carried out as at the date of this final decision and using the most recent financial assumptions at the date of this final decision. In accordance with the FCA's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr R's acceptance of this final decision.

Acumen may wish to contact the Department for Work and Pensions ("DWP") to obtain

Mr R’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 BSPS on Mr R’s SERPS/S2P entitlement.

I’m aware that Mr R has since transferred to a new pension plan on the advice of a different adviser. Mr R will need to give Acumen appropriate authority so that it can obtain details of his new pension plan to enable it to carry out a redress calculation. If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr R’s new 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 plan isn’t possible or has protection or allowance implications, it should be paid directly to Mr R 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’ve been taken as tax-free cash and 75% would’ve been taxed according to his likely income tax rate in retirement – presumed to be 20%, as previously stated by our investigator. So making a notional deduction of 15% overall from the loss adequately reflects this.

If this 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 R £300 for the distress and inconvenience this matter has caused him.

The compensation amount must, where possible, be paid to Mr R within 90 days of the date Acumen receives notification of his acceptance of this final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of this final decision to the date of settlement for any time, in excess of 90 days, that it takes Acumen to pay Mr R.

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. 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 R the compensation amount as set out in the steps above, up to a maximum of £160,000. Where the compensation amount doesn’t exceed £160,000, I would additionally require Acumen Independent Financial Planning Limited to pay Mr R 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 R 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 R the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr R. If

Mr R accepts this final decision, the money award becomes binding on Acumen Independent Financial Planning Limited. My recommendation wouldn’t be binding. Further, it’s unlikely that Mr R can accept this final decision and go to court to ask for the balance. Mr R may want to consider getting independent legal advice before deciding whether to accept this final decision.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr R to accept or reject this final decision before 26 January 2023.
Clint Penfold
Ombudsman