

The complaint

Mr J complained that he was given unsuitable advice to transfer his deferred defined benefit (DB) British Steel Pension Scheme (BSPS), to a type of personal pension plan, in 2018.

Acumen Independent Financial Planning Limited is responsible for answering this complaint and so to keep things consistent, I'll refer mainly to "Acumen".

What happened

In March 2016, Mr J's employer announced that it would be examining options to restructure its business, including decoupling the BSPS 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 personal pension arrangement.

In May 2017, the Pension Protection Fund (PPF) made the announcement that the terms of a Regulated Apportionment Arrangement (RAA) had been agreed. That announcement said that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr J's employer would be set up – the BSPS2.

In around October 2017, members of the BSPS were being 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 BSPS2 or transfer their BSPS benefits elsewhere. The deadline to make their choices was 11 December 2017 (and was later extended to 22 December 2017).

Mr J was concerned about what the announcement by his employer meant for the security of his preserved benefits in the BSPS. He was unsure what to do and was referred to Acumen which is responsible for providing the pension advice. Information gathered about his circumstances and objectives at the time of the recommendation were broadly as follows:

- Mr J was 44 years old, married and with no dependent children. Mr and Mrs J owned a home with no outstanding mortgage.
- Mr J had left British Steel by the time the advice was given. He earned around £25,000 per year in a new role. Mrs J earned £21,000.
- After expenses he and Mrs J had a notable amount of disposable income left over each month. They also had savings of £12,000. Both Mr and Mrs J respectively had elderly relatives' properties 'signed over' to them although the full details of these arrangements weren't made apparent in the documentation I've seen. However the implication was that they had significant assets of considerable value yet to be released to them.
- The cash equivalent transfer value (CETV) of Mr J's BSPS was approximately £223,065. The normal retirement age (NRA) was 65.

- Mr J had two other pensions, but these were of modest values, and they don't affect or relate to Mr J's complaint about the BPS.

Acumen set out its advice in a suitability report which is undated but believed to be in January 2018. In this it advised Mr J to transfer out of the BPS and invest the funds in a type of personal pension plan. Acumen said this would allow Mr J to achieve his objectives. Mr J accepted this advice and so transferred out in mid-2018. In 2022 Mr J complained to Acumen about its advice, saying he shouldn't have been advised to transfer out to a personal pension.

Mr J referred his complaint to our Service. One of our investigators looked into the complaint and said it should be upheld. In response, Acumen said it hadn't done anything wrong and was acting on the financial objectives Mr J had at the time. As the complaint couldn't be resolved informally, it's come to me for 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 also 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'). 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.

I have further considered that the regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6 that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, Acumen should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr J's best interests.

I've used all the information we have to consider whether transferring away from the BPS to a personal pension was in Mr J's best interests. I have also carefully considered the final response letter from Acumen. I've carefully considered too, the various other responses made to the points contained within our investigator's view.

Having done all this, I'm upholding Mr J's complaint.

Introductory issues

I'd like to start by referring to the 'timeline' of events. I've already described above how members of the BSPS were given until 22 December 2017 to decide whether or not to join the BSPS2.

However, there's documentation which I've seen showing Mr J did make a choice. I've seen, for example, that in November 2017 he completed a return slip where the option to transfer into the forthcoming BSPS2 was selected by him. And I've also seen confirmation, dated 30 November 2017, showing the trustees confirming they had received Mr J's selection.

I've noted many of the other key documents in this case are either undated or dated at various points in January 2018. For instance, there was no date on the suitability report or retirement questionnaire, but I can see the risk profile report and the transfer analysis were both definitely carried out in January 2018.

On the face of it, what this means is that many of the dealings Acumen had with Mr J were in 2018 and so after the 'hard' deadline of 22 December 2017. However, we know Mr J had already opted for the BSPS2 ahead of that deadline and so Acumen would, or certainly should, have enquired into this fact as it was of critical importance. I have also seen that Acumen itself acknowledges it was engaging with Mr J as far back as 13 December 2017 when it received some pension transfer information from him.

I should say that none of this really matters to the actual *suitability* of the advice. But because we know Mr J had already opted to join the BSPS2, Acumen's advice to transfer away effectively removed that opportunity from him. Redress is therefore due to Mr J as if he'd transferred to the BSPS2 as he'd already indicated he had wanted to join. And it was Acumen's recommendation that altered Mr J's pathway to eventually joining the BSPS2.

Acumen has also said, in its defence of this complaint, that so few details were known about the BSPS2, that it couldn't recommend it to Mr J. However, this simply isn't correct. We've seen a great many similar cases to this one and so have a good understanding of the relevant timelines. And I know that by the time the advice was given – which was probably through January and February 2018, substantial details of the new BSPS2 had emerged. As I've also described above, Mr J had not only received his "Time to Choose" letter about what his options were, he'd already made the choice. And even if these things weren't true, Acumen's position would therefore be that it advised him to transfer away to a personal pension when it didn't have enough information to do so. Clearly that would also be wrong.

However, to be clear, Mr J had opted into the BSPS2 and there were many facts known already about how it was going to operate.

Financial viability

Acumen referred in its transfer analysis and suitability report to 'critical yield' rates. The critical yield is essentially the average annual investment return that would be required on the transfer value - from the time of advice until retirement - to provide the same annuity benefits as the DB scheme. In this case, Acumen used the existing scheme (BSPS) for the critical yield comparisons, rather than the 'new' BSPS2.

The critical yield comparison was a requirement from the regulator at the time when advising clients on DB transfers. It's also important to point out that the critical yield comparison is only one of a number of different metrics I've used to compare the different schemes. And in

my view, these all point one way – that Mr J was probably going to receive lower pension benefits overall, as a result of transferring to a type of personal pension plan. The critical yield required to match the benefits at the age of 65 in the existing scheme, was described as 7.3%. For an earlier retirement, at the age of 55, the critical yield was 10%.

I've noted that in its own suitability report Acumen acknowledges that these critical yields would be *"unlikely to be achievable"*. Clearly, if it thought this, back in 2017, it would be hard for Acumen to argue now that achieving the critical yields *were* achievable.

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. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor. Acumen assessed Mr J as a "high medium" risk 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. This was only 4.5% per year for 20 years to retirement (age 65), which is well below all of the critical yield figures I've referred to above. For a retirement at the age of 55, the discount rate was only 3.9%. I've also kept in mind that the regulator's middle projection rate was 5% but this hadn't been updated for several years.

I therefore think it's fair to say that from a financial comparison perspective, Acumen's own figures, shown in its suitability report and transfer analysis documents, showed that transferring to a personal pension plan would mean Mr J would likely receive lower pension benefits in the longer term. As I've said though, Acumen seemed to accept this.

Of course, according to Acumen, its recommendation that he should transfer out to a personal pension was not based on the financial comparisons with his current scheme alone. Rather, Acumen said Mr J also had other reasons to transfer away, so I've thought about all the other considerations which might have meant a transfer was suitable for him, despite providing the overall lower benefits mentioned earlier. I've considered these below.

Other reasons to transfer

I've used all the information from the advice sessions to draw out the main themes on which Acumen's recommendation to transfer was based. At the outset of the suitability report Acumen said Mr J's stated objectives were that he wanted to retire at around the age of 55 although this might be phased in by reducing his working hours. It also said Mr J foresaw that an income of just £12,000 per year would be needed in 'today's' money to support him in retirement and that he and Mrs J would eventually receive a state pension in their late 60s. Acumen also said Mr J was keen on Mrs J being able to receive a legacy if Mr J died first and that this should be lump sum based, rather than an income.

Upon recommending the type of pension (and funds) he should transfer into; Acumen listed the rationale for transferring as follows:

- Acumen said the benefits in a personal pension could be taken earlier.
- It said the tax-free cash lump sum at retirement was better.
- It said there were greater freedom and flexibility of the pension funds.

- Acumen implied the death benefits were better in a personal pension.

I have therefore considered all these themes.

- *Retiring early / accessing tax-free cash*

I've taken into account that Mr J approached Acumen for advice because of the uncertainties he faced with the BPS2. He clearly didn't want to enter the PPF as he had already opted to go into the BPS2.

However, overall I think the adviser focused heavily on transferring away, rather than starting by assessing whether BPS2 could meet Mr J's retirement needs and objectives. I think the adviser just promoted the more flexible arrangements which Mr J would find with a personal pension plan.

Mr J was only 44 and still in good health. And the evidence I've seen here is that – understandably – he had no concrete plans yet for his retirement. In fact, I think it's more likely he had only referred to the *possibility* of retiring at 55, so this was clearly an aspiration rather than part of a definite plan. I've noted, for instance, that Mr J also said he would be prepared to continue to work beyond the age of 55 if he reduced his working hours.

I accept, like most people, Mr J might well have wanted to give up working as soon as he could, but I don't think there was any persuasive evidence here that this was anything more than initial thoughts about a possible retirement, which at 44 was still some years away. So, when Mr J said he'd only need around £12,000 per year when he eventually did retire, I think this could be no more than an educated guess at that point in his life. The adviser should have known there were still many permutations his life could follow.

Acumen also made several references to the two houses apparently already gifted to both Mr and Mrs J by their older relatives. The implication here was, I think, that Mr and Mrs J stood to release significant financial assets in due course, comprising of well over £200,000 in total. They also had their own home which was mortgage free and some savings.

Knowing of Mr and Mrs J's apparent moderate living costs and all these other assets, I can't therefore see why there was any rationale for transferring to a personal pension plan based on a need for having more "*capital preservation*" as Acumen referred to in the suitability report.

Even if I were to consider the unlikely scenario that Mr J's retirement hopes were much more fixed than the mere aspirations set out by Acumen - and he really did comprehensively plan to retire early - I think Acumen should have assessed the possibility of achieving this goal whilst being a member of the BPS2 for example. I explain a little more about this later, but early retirement under the BPS2 would still have been a realistic option for Mr J and Acumen should have used the details of the new scheme, which were readily available at the time. Retiring early from that DB scheme (the BPS2) would simply have meant Mr J's pension benefits would have been somewhat different, due to him accessing the pension earlier and for longer. But I think the default position of the adviser was just to transact what Mr J felt was a good idea.

However, the adviser was being paid for this advice. And Mr J wasn't experienced in these matters. So, the adviser's job wasn't to just wave all this through. Their responsibility was to act in Mr J's best interests and to recommend what was suitable for him. In my view, the adviser should have recognised that leaving a DB scheme in his circumstances wasn't the suitable option here and that Mr J was still comparatively young in pension terms. Acumen should have recognised there was no retirement plans that meant Mr J was definitely going

to retire so early. And predicting what a retirement for him looked like, so far in the future, presented uncertainties. On this basis, leaving a DB scheme at the age of 44, with all the guarantees and benefits BPS2 offered, was wrong

I think it's likely Acumen also promoted to Mr J that he could access more tax-free cash if he transferred to a personal pension plan. It said he'd be able to access 25% of his pension as a lump-sum and then use the remaining funds more flexibly. It's usually the case that more tax-free cash can be accessed from a personal pension when compared against a DB scheme; this is because the values and benefits of the two schemes are calculated differently. But Acumen should have been telling Mr J at the time that extra tax-free lump sums being removed from a personal pension, potentially in his mid-fifties in his case, also came with consequences in that the amount left for his later retirement years would obviously decrease.

So, whilst I accept the notion of retiring early and / or accessing tax-free cash might have been appealing, this needed to be considered against the other viable options Mr J faced; in my view this included opting for the BPS2. However, from an age perspective, I think Mr J was far too young to be advised to transfer away from a DB scheme to obtain a modest income and a cash lump sum he didn't appear to need. It was simply far too early for him to make such a decision.

- *Flexibility and control*

I can't see that Mr J required flexibility in retirement in the way Acumen suggested. In any event, flexibility was poorly defined by Acumen. As I've said, it said "*capital appreciation*" was more preferable to Mr J but given his other assets, it didn't really explain why. And the implication that he could start taking his pension income at any time after the age of 55 didn't, in my view, have any reasoning behind it as to why this was really necessary or why it was preferable.

I therefore think this was no more than a 'stock' objective used to help justify the recommendation to transfer out to a personal plan. For example, I've seen nothing that showed Mr J required changing how his retirement benefits ought to be paid. This means I've seen nothing explaining why Mr J wouldn't want to continue membership of a DB scheme and to use that scheme in exactly the way it was originally intended.

Acumen's analysis said that if retiring at 65, Mr J could expect an annual pension of around £14,102 per year. Even if I were to only use the estimated pension calculated for the earlier retirement, at aged 55, the full pension was still £7,665 per year. Mr J had said he might need £12,000 but as I've said, there was no credibility in predicting this so far ahead of retirement.

In any event, Mr J was currently contributing to a pension with his new employer and he did also have modest pension savings elsewhere. It's easy to discount these other pensions, but even if he retired very early there were still over 10 years' worth of contributions and growth yet to be added to his new work-based DC scheme. And if he worked to his NRA, there would be over 20 years' worth of contributions and growth still to be made.

Acumen didn't go into many details about this secondary pension provision, but given his notable disposable monthly income in 2017, Mr J could have been advised to contribute more to this new DC scheme, thereby making this a much more relevant part of his overall pension savings. So, it certainly isn't unreasonable to say that by retirement, which was still a long way off for him, Mr J could have built up a meaningful DC fund. In my view, the adviser should have comprehensively researched these opportunities and then incorporated them into their overall advice.

Of course, Mr J himself had also explicitly said that he might even continue working beyond the age of 55, so this would have made this second pension even more relevant because he'd be contributing for longer. And if he was still working part-time past the age of 55, he wouldn't need to be withdrawing any pension funds just yet, particularly if Mrs J was still working.

I therefore don't think there's anything showing Mr J's forecasted DB pension entitlements wouldn't have easily met his retirement income requirements, without any need to transfer from his DB scheme. He'd said his income needs were minimal, he still had time to add more pension provision in a DC scheme, and ultimately, he had told the adviser that he and Mrs J expected to have significant releasable assets in properties at some point. It seems Mrs J also had her own pension. So, I don't think Acumen adequately explained these things to Mr J as its advice simply assumed him transferring to a type of personal pension scheme to obtain flexibility which was poorly defined and which he didn't appear to need.

I think Mr J's circumstances here were much more aligned to him transferring to BSPS2 and retiring from that when he felt he was ready to do so. The evidence pointed to him still being able to retire earlier than 65 if he felt he really needed to – there would have been an actuarial reduction involved, depending on his age at the time. But because he also had a growing DC pension, this supported that strategy in my view.

I think that by retirement, whenever it eventually came, Mr J could have been in an agreeable position. On one hand he'd have an existing deferred DB scheme of considerable value. This would contain all the guarantees and benefits that such schemes normally bring which tend to include a promise to pay a known pension for life. Significant indexation guarantees also existed within BSPS2 and the scheme was still underpinned by the PPF. On the other hand, he'd have also built up a DC scheme over a reasonable period of time – anything up to 20 years. So, if Mr J ever found he needed so-called flexibility, then he'd be able to use the latter, rather than transferring away from the former.

I've also seen no evidence that Mr J had either the capacity or desire to exercise control over his funds. With his DB scheme, Mr J was being offered the opportunity to transfer to the new BSPS2. It's true there were some differences in this scheme when compared to the original BSPS, but it remained a DB scheme nonetheless and was run for him by trustees. Mr J himself had no experience of these types of 'money market' investments and I think he would have found the complexity, scale and responsibility of managing over £223,000 of transferred funds to be onerous in the years ahead. What I've seen tends to show Mr J would have required ongoing financial advice and support, all of which would cost him money which his DB scheme didn't require from him.

- *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 BSPS2 contained certain benefits payable to a spouse if Mr J died. Mr J was married and although it seems Mrs J had a pension of her own, its value was relatively modest. So, I think it's more likely the benefits found in BSPS2 would have been of reassurance to Mrs J if Mr J died.

Looking at the documents we have from the advice sessions, I think the adviser probably told Mr J that he'd be able to pass on the whole value of a personal pension, potentially tax-free, to anyone he nominated. I think there was clearly a discussion about this, so the lump sum death benefits on offer through a personal pension was probably made to look like an attractive feature to Mr J. Within the BSPS2, Mrs J would receive broadly half of Mr J's pension if he died in retirement.

But whilst I appreciate death benefits are important to consumers, and Mr J might have thought it was a good idea to transfer the BSPS to a personal pension because of this, the priority here was to advise him 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 J was prepared to accept a different retirement income in exchange for different death benefits.

There were significant death benefits for a remaining spouse in the BSPS2 both pre and post retirement. Mr J was only 44 and so an obvious drawback with a personal plan's death benefits is that the amount left to pass on – to anyone – may be substantially reduced as the pensioner starts to withdraw his or her retirement income. To this end, if Mr J had lived a long life there could be nothing left at all in his personal pension plan.

Although I've questioned the ability to forecast an early retirement whilst still so young, there's no real doubt that retiring at 55 was at least mentioned. The adviser should have therefore additionally known that a male retiring at 55 would likely have many years ahead in which he would be drawing down his pension funds thus leaving very little left to pass on to someone. Mr J could have nominated a beneficiary of any funds remaining in his other DC scheme.

I can't say the extent to which life insurance was discussed in this case. But again, the adviser failed to present all the relevant options about insurance to Mr J, because they were wholly focussed on transferring him away from a DB scheme and into a personal pension plan. I don't think this was good advice or advice that was in Mr J's best interests. At 44 years old, a 'term' life insurance policy may have still been a reasonably affordable product for Mr J if he really did insist on leaving a lump-sum legacy for Mrs J (rather than an annual pension), or indeed anyone else. So, to this end, Mr J already had options ensuring part of his pension wouldn't 'die with him'.

Overall, in this case I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr J. I think this objective, listed as it was in the suitability report, was no more than a generic comment and not meaningful to Mr J's situation.

- *Concerns over the financial stability of the DB scheme*

It's clear that Mr J, like many employees of his company, was concerned about his pension. His former employer had recently made the announcement about its plans for the scheme and Acumen said he lacked trust in the company. He'd heard negative things about the PPF and Acumen said he could have more control over his pension fund.

So, it's quite possible that Mr J was also leaning towards the decision to transfer because of the concerns he had about his employer. However, it was Acumen's obligation to give Mr J an objective picture and recommend what was in his best interests. By the point of the advice being delivered details of BSPS2 were known and it seemed likely it was going ahead.

However, even if there was a chance the BSPS2 wouldn't go ahead, I think that Acumen should have reassured Mr J that the old scheme moving to the PPF wasn't as concerning as he thought. The income available to Mr J through the PPF would have still probably provided a significant portion of the income he would have needed at retirement, and he was still unlikely to be able to exceed this by transferring out, given his attitude to risk and the effect of pension charges and fees. 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 these concerns should have led to Acumen's recommendation to Mr J to transfer out of the DB scheme altogether.

Suitability of investments

Acumen recommended that Mr J invest his funds in a personal pension. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr J and I don't think he would've insisted on transferring out of the scheme if clear advice had been given to him, it follows that I don't need to consider the suitability of the investment recommendation. This is because he should have been advised to remain in the DB scheme and so the investment in the new funds wouldn't have arisen if suitable advice had been given.

Summary

I don't think the advice given to Mr J was suitable.

He was giving up an opportunity of a guaranteed, risk-free and increasing income within the BSPS2. By transferring to a personal pension, the evidence shows Mr J was 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. I think Acumen ought to have advised him against transferring out of his DB scheme for this reason, particularly as it meant he'd be worse off in retirement.

I think it was clear to all parties that the BSPS2 was likely to be going ahead. Mr J still had many more years before he intended to retire. He'd already opted into this scheme. So, I don't think it was in Mr J's best interests for him to transfer his DB scheme to a personal pension when he had the opportunity of moving into the BSPS2.

On this basis, I think Acumen should have advised Mr J to remain opted into the BSPS2.

I have considered, given the circumstances of the time, whether Mr J would have transferred to a personal pension in any event. I accept that Acumen disclosed some of the risks of transferring to Mr J, and provided him with a certain amount of information. But ultimately it advised Mr J to transfer out, and I think Mr J relied on that advice.

I'm not persuaded that Mr J would have insisted on transferring out of the DB scheme, against Acumen's advice. I say this because he'd already opted for the BSPS2. Mr J was also an inexperienced investor and this pension accounted for most of his retirement provision at the time. So, if Acumen had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think he would have accepted that advice.

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

Putting things right

A fair and reasonable outcome would be for the business to put Mr J, as far as possible, into the position he would now be in but for Acumen's unsuitable advice. I consider Mr J would have most likely remained as opted into joining the forthcoming BSPS2, rather than transfer to the personal pension if he'd been given suitable advice.

Compensation should be based on his normal retirement age of 65, as per the usual assumptions in the FCA's guidance. Acumen should use the benefits offered by BSPS2 for comparison purposes.

Acumen must therefore undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in policy statement PS22/13 and set out in the regulator's handbook in DISP App 4:

<https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter>.

Acumen should use the FCA's BSPS-specific redress calculator to calculate the redress. A copy of the BSPS calculator output should be sent to Mr J and our Service upon completion of the calculation.

This calculation should be carried out using the most recent financial assumptions in line with DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr J's acceptance of my final decision.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, Acumen should:

- calculate and offer Mr J redress as a cash lump sum payment,
- explain to Mr J before starting the redress calculation that:
 - their redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
 - a straightforward way to invest their redress prudently is to use it to augment their DC pension
- offer to calculate how much of any redress Mr J receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr J accepts Acumen's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr J for the calculation, even if he ultimately decides not to have any of their redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr J's end of year tax position.

Redress paid to Mr J as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, Acumen may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr J's likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

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.

Our investigator recommended that Acumen should pay Mr J for the distress and inconvenience caused by the unsuitable advice. I have considered the impact this would likely have had on Mr J in his particular circumstances. This pension at the time represented the majority of his retirement provision. In his situation I think the thought of losing material benefits would have impacted heavily upon Mr J. So I agree the recommended payment of £300 for distress and inconvenience. Acumen should pay Mr J this amount in addition to the redress I've set out above.

My final decision

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

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

If Mr J accepts my final decision, the money award becomes binding on Acumen Independent Financial Planning Limited.

My recommendation would not be binding. Further, it's unlikely that Mr J can accept my decision and go to court to ask for the balance. Mr J 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 J to accept or reject my decision before 1 November 2023.

Michael Campbell
Ombudsman