

The complaint

Mr J 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 J says the advice was unsuitable for him.

Both Mr J and Acumen have used third parties to represent them at times during this complaint. But, for ease of reading this decision, I'll largely refer to representations as just being made by Mr J and 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 (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 September 2017, the BSPS provided Mr J with a summary of the transfer value of his scheme benefits. This said his benefits had a cash equivalent transfer value ('CETV') of £78,599.96. And in October 2017, members of the BSPS were sent a "Time to Choose" letter which gave them the options to either stay in BSPS and move with it to the PPF, move to the BSPS2 or transfer their BSPS benefits elsewhere.

Mr J approached Acumen in October 2017 to discuss his BSPS pension.

Acumen completed a fact-find to gather information about Mr J's circumstances and objectives. It noted he was 35, employed full time, in good health and married with two children. He and Mrs J had an outstanding mortgage and car loan but there was no indication these were unaffordable or that they wouldn't be cleared in full by the time Mr J came to retire.

In addition to the benefits held in the BSPS, Mr J was also a member of his employer's new defined contribution pension scheme. He and his employer were making combined contributions to this equivalent to 16% of his salary. That pension arrangement had only recently begun though and the BSPS benefits made up the significant majority of his retirement provisions at that time.

Acumen says Mr J was interested in potentially retiring at age 58. But as that was approximately 23 years away his income needs in retirement, as well as whether he might look to take a tax-free cash sum, were unknown. Acumen says Mr J wanted to transfer his pension because he was concerned about the situation with the BSPS, the pension potentially entering the PPF and the viability of his employer. It says he therefore wanted control over the pension, the ability to take benefits flexibly to allow him to retire at age 58 and preferred the lump sum death benefits offered by a personal pension.

Acumen also carried out an assessment of Mr J's attitude to risk, which it deemed to be 'highest medium' or a 7 on a scale of 1 to 10.

Acumen has said that its adviser met with Mr J around 30 October 2017. During that meeting it says Mr J indicated he wished to proceed with a transfer and Acumen verbally advised him to do so and completed application forms to facilitate the transfer.

On 15 November 2017, Acumen sent Mr J a written summary of its advice. Acumen recommended Mr J transfer his BPS benefits to a personal pension with a specific provider. It said transferring to a personal pension met his objectives. Acumen noted that the critical yield, the annual rate of return required of a new pension that would allow Mr J to purchase equivalent benefits to those he was guaranteed under the DB scheme, was unlikely to be achievable. So, by transferring he may receive a lesser amount in retirement and those benefits would now be entirely reliant on investment returns. But Acumen said it assumed that Mr J's desire to live on a lower level of income and *"the ability to have flexible access to your retirement funds, allowing you to control when and how you receive benefits, together with the substantially better lump sum death benefits"* was a higher priority and objective for him than the benefits being given up. And so, it felt transferring was suitable. Subsequent to the transfer, Acumen would also provide ongoing monitoring and servicing of the pension, at a cost.

Mr J complained to Acumen in 2020 about the suitability of the transfer advice. He didn't think it was a suitable recommendation for him to give up guaranteed retirement benefits so far from his intended retirement, particularly given his needs in retirement were unknown. So, he didn't think the recommendation was in his best interests.

Acumen didn't uphold Mr J's complaint. It said Mr J had sourced a CETV before contacting it and had been clear he was looking to transfer his pension. Acumen said it felt it had taken reasonable steps to ensure that the advice it provided was suitable and that Mr J had made an informed decision to transfer. It said its advice had explained that, if Mr J was trying to match the existing benefits, a transfer might not have been appropriate. But because of the objectives he'd outlined, Acumen had assumed these were more important to him and it believed the transfer was suitable. It added that the BPS2 was not confirmed at the time of the advice. So, it couldn't have reasonably recommended joining it. And Acumen said it wasn't required to guarantee that the transfer would be suitable for Mr J when viewed with hindsight. Rather it needed to take reasonable steps to ensure the advice was suitable for Mr J at the time.

Mr J 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 as well as £300 for the distress caused. In summary, he didn't think Mr J was likely to be any better off as a result of transferring but doing so introduced significant additional risk. He didn't think Mr J had genuine need for flexibility or control at the time of the advice. Nor did he think transferring in order to achieve alternate death benefits was appropriate. He thought Mr J should've been advised not to transfer and instead move to the BPS2.

Acumen didn't agree. It said it felt the Investigator had assessed the case on the wrong basis. It reiterated it wasn't required to guarantee that the transfer was suitable for Mr J, 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 J had made a fully informed decision to proceed with the transfer, which hadn't been taken into account. And it also maintained that the BPS2 was not a confirmed option at the time of the advice.

The Investigator wasn't persuaded to change their opinion. He reiterated he was required to look at whether the transfer was in Mr J's best interests. And he didn't think it was, given how long it was until Mr J was due to retire and his plans therefore being largely unconfirmed. 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 J. 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 J 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 J'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 J'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

As part of advising on a potential transfer of DB scheme benefits, the regulator required Acumen to obtain a transfer value analysis ('TVAS') report. Acumen has provided copies of two TVAS reports it instructed approximately six days apart. These were carried out by two different pension providers. One by the provider that Acumen ultimately recommended Mr J transfer his benefits to and one by another business that Acumen has indicated it was considering as a potential option for Mr J. These reports included the calculation of critical yields. And the figures calculated were marginally different in each report.

The critical yields Acumen referred to in the suitability report were the lower of those calculated. But were calculated by the provider it did not recommend. I think it'd have been more appropriate to use the figures calculated by the provider that Acumen recommended the pension was ultimately transferred to. And there was nothing preventing this, as Acumen recommended a pension provider within the suitability report.

Acumen says the critical yield is of limited relevance and can be unreliable. But the regulator requires this to be calculated and considered when giving pension transfer advice. So, I do think an analysis of the critical yield is a relevant consideration here. Acumen also says Mr J had no intention of purchasing an annuity, making the critical yield even less relevant. But Mr J was only 35 at the time of the advice – over 20 years away from when he'd likely be able to take benefits in any form from the pension. So, I don't think a decision about his needs in retirement could be taken with certainty at that time – as the fact find suggested. And it was entirely possible that when he did retire, he may have wanted greater guarantees for his income, such as those an annuity would provide.

In addition to the choice of critical yield figures Acumen used, I also think the TVAS reports in general were not as effective and useful a tool as they should've been for enabling Mr J to make an informed decision. Which I think was because of what Acumen requested be compared.

The calculations of the critical yields by both providers only accounted for Mr J taking a full pension from the DB scheme. There were no calculations for what return would be needed if he chose to draw tax-free cash when he retired. The suitability report said one of the reasons for the recommendation was that the personal pension allowed 25% to be taken as tax-free cash ('TFC'). The fact-find suggested that Mr J did not know if he was likely to take TFC, because his plans were not finalised as he was over 20 years from retiring. But given Acumen said this was a reason for its recommendation, I'd have expected to see a comparison to that scenario within the TVAS.

The critical yields in both TVAS reports were also based on Mr J retiring at age 65. But Acumen said retiring early, around age 58, was one of Mr J's preferences and the transfer providing the flexibility to enable this was said to be one of the reasons for the recommendation. 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 for retiring at that age to illustrate the value of the DB scheme benefits.

And the critical yield figures were based on matching Mr J's existing scheme, the BSPS. But Mr J didn't have the option to remain in the BSPS as it was. He either needed to opt into the BSPS2 or move with the BSPS to the PPF if he stayed with the DB scheme. While critical yield figures were calculated in respect of moving to the PPF, which was appropriate, there was no comparison to the BSPS2. And I think there should've been. By the time the advice was given here, sufficient details around the BSPS2 had been provided for a meaningful comparison to have been made.

Acumen has argued that BSPS2 may not have gone ahead. So, says it was not actually an option for Mr J. But I still think a comparison of benefits ought to have been carried out as

part of the TVAS given the details of the BSPS2 that had been released at that time - that the BSPS2 would've offered the same income benefits as the BSPS but the annual increases would've been lower.

And I think Acumen is also overstating the chance of the BSPS2 not happening. The restructuring of BSPS had been ongoing for a significant amount of time by the point Acumen instructed the TVAS reports and provided Mr J advice. Mr J'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 in September 2017. Mr J 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. 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 J through the BSPS2 should've been factored into the TVAS reports and subsequent advice so that he was able to make an informed decision.

The issues with the TVAS reports notwithstanding, I have considered them when looking at whether the transfer was in Mr J's interests.

For matching the full pension, the BSPS would've provided at age 65 the report by the pension provider Acumen recommended said the critical yield was 7.6%. With the other report saying this figure was 6.9%. And for matching the full pension the PPF would provide at age 65 the reports gave critical yields of 5.8% and 5.1% respectively. The critical yields applicable to the BSPS2 benefits were not calculated – although again I think they should have been. The lower annual increases under the BSPS2 would've likely decreased the critical yields somewhat in comparison to the BSPS. 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 BSPS benefits, particularly at age 65.

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 29 years to retirement (which would be the case if Mr J 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've taken this into account, along with the composition of assets in the discount rate, the term to retirement and the 'highest medium' attitude to risk that Acumen said reflected Mr J's position. There would be little point in Mr J giving up the guarantees available to him through

a DB scheme only to achieve, at best, the same level of benefits outside the scheme. But here, I think Mr J 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 or the PPF.

As I've said, the TVAS reports did not include a calculation of the critical yield required to match what Mr J could take at age 58. But in my experience, critical yields tend to be higher for shorter terms to retirement, as the pension fund will have less time to grow in value, even accounting for the actuarial reduction in starting pension benefits. And the discount rate for 22 full years to retirement, as would've been the case if Mr J retired at age 58, was lower, at 4.5%. So, on balance I think it is also likely that Mr J would've received benefits of a lower overall value at age 58 than those he'd have been entitled to under the BSPS2 or the PPF as a result of transferring.

So, from a financial viability perspective, I don't think a transfer was in Mr J'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 J was aware of the risk of receiving lower overall benefits and accepted this. Making Mr J aware of risk doesn't mean it was suitable advice to recommend that he take it. 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

Acumen says Mr J wanted flexibility in terms of how he could take his benefits, so that he could 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 J to take benefits at age 58 if he chose to do so. The amount he could take at that point would've been subject to an actuarial reduction. But an actuarial reduction is intended to reflect the pension benefits being paid for longer – 7 years longer if taken at age 58 rather than 65. The starting monetary amount when compared with the full pension payable from age 65 – the normal scheme retirement age – would've been less. But this was a trade-off for taking the benefits for longer, rather than a 'penalty'. And, as I've already explained, I think Mr J was always likely to receive benefits of a lower overall value than those he'd have been guaranteed under the BSPS2 or the PPF at age 58 as a result of transferring.

I also note the fact-find said Mr J was not sure of his needs or income requirements in retirement – which I don't think was unreasonable given how long it was until he could retire. So, I don't think it can be argued he *needed* to transfer in order to achieve a specific level of income, when these needs were unknown. And by the time Mr J came to make a decision about retiring, this pension, which gave him valuable guarantees, wouldn't have been the only retirement provisions available to him. He was a member of his employers new defined contribution scheme and he had over 20 years to contribute to this or any other retirement provisions.

Ultimately, Mr J was only 35 when Acumen advised him to transfer – over 20 years from being able 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 J to give up his guaranteed benefits when he did. If Mr J later had reason to transfer out of his DB scheme I understand that this would've been allowed under

BSPS2. And he could've done so closer to retirement

Death benefits

Death benefits are an emotive subject and of course when asked, most people would like their loved ones to be taken care of when they die. The lump sum death benefits on offer through a personal pension was likely an attractive feature to Mr J. But whilst I appreciate death benefits are important to consumers, and Mr J 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 J 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 lower retirement income in exchange for higher death benefits. The suitability report said Acumen assumed this was of a higher priority to Mr J than a higher guaranteed income. But I don't think that was a reasonable assumption or that accepting a lower income was in his best interests just to achieve alternate death benefits.

I also think the existing death benefits attached to the DB scheme were underplayed. Mr J was married and had young children and so the spouse's and dependent's pension provided by the DB scheme – which I understand would've been replicated by the BSPS2 or the PPF – would've been useful to his spouse and dependents if Mr J predeceased them. These benefits were guaranteed and escalated. Whereas the sum remaining on death in a personal pension was dependent on both investment performance and whether, and how much, Mr J had drawn an income from the fund before passing away, which would've reduced the amount available as a lump sum. And given he was recorded as being in good health, there was nothing to suggest he was less likely to reach his average life expectancy, meaning the sum remaining was likely to have been significantly depleted by the time it was passed on and may not have provided the legacy Mr J may've thought.

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

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 J.

Control and concerns over financial stability of the BSPS

Acumen says Mr J wanted control of his pension. But I think this objective was more linked to the uncertainty about the BSPS and his concerns about how his employer had handled the scheme.

The information I've seen suggests Mr J was an inexperienced investor. He did say he'd invested previously without advice in one of the risk profile questionnaires he completed. But this was quantified by saying it was in a junior ISA. And he was clear he'd never invested in the stock market or other investments, such as structured products. So, I'm satisfied he was inexperienced. And I cannot see that he had an interest in or the knowledge to be able to manage his pension funds on his own. So, I think this desire for control has been overstated somewhat and I don't think that this was a genuine objective for Mr J – rather it was a consequence of transferring away from the BSPS.

I don't doubt Mr J, like many of his colleagues, was concerned about his pension. His employer had been consulting on its plans for the scheme for some time. And there appears to have been a general mistrust and lack of optimism. And I think it's quite possible that Mr J was leaning towards the decision to transfer because of the concerns he had about his employer and his negative perception of the PPF. But this meant it was even more important that Acumen gave Mr J an objective opinion and recommend what was in his best interests. Acumen has suggested that Mr J had a particular mistrust for his employer. But his employer and the pension scheme trustees were not entirely one and the same. And I don't think Acumen did enough to really draw that distinction to address Mr J's concerns.

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

But even if there was a chance the BSPS2 wouldn't go ahead, I think that Acumen should've reassured Mr J that the scheme moving to the PPF wasn't as concerning as he thought. He didn't have firm retirement plans or know what he would require in retirement. But, as I've explained, he could still have taken benefits early under the PPF. And he was unlikely to exceed these benefits by transferring his pension. And although the increases in payment in the PPF were lower, the income was still guaranteed and was not subject to any investment risk. So, I don't think that Mr J's concerns should've led to Acumen recommending he transfer out of the DB scheme altogether.

Summary

I don't doubt that the flexibility, control and potential for higher death benefits on offer through a personal pension would have sounded like attractive features to Mr J. But Acumen wasn't there to just transact what Mr J might have thought he wanted. The adviser's role was to really understand what Mr J needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr J was suitable. His needs in retirement were, in my view, very much uncertain. 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 J was always likely to obtain lower retirement benefits as a result of transferring. And I don't think there were any other reasons which would justify the transfer and outweigh this – particularly given how far away from making any real decisions about retirement Mr J was. So, I don't think it was in Mr J'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 at the time that it was likely to be going ahead.

Mr J had over 20 years before he expected to retire, and he didn't know what his needs in retirement would likely be. So, I don't think that it would've been in his interest to accept the reduction in benefits he would've faced by the scheme entering the PPF. 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. And by opting into the BSPS2, Mr J 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 J would've opted into the BSPS2.

Of course, I have to consider whether Mr J would've gone ahead anyway, against Acumen's

advice. And Acumen says he would've, as he made an informed decision when transferring.

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

While Mr J had obtained a CETV from the trustees of the BSPS 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 at some point. 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 J and provided him with a significant amount of information in the suitability report. But ultimately it advised Mr J to transfer his benefits, and I think Mr J relied on that advice.

Like many of his colleagues, Mr J had been given a lot of information about the BSPS in the months before taking advice. I don't doubt he'd taken the time to take all of that information on board. And he may even have gone into the discussions thinking transferring was potentially a good idea. But Mr J 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 J's concerns about the consultation or the PPF, or the potential appeal of alternative death benefits and flexibility 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 J 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 J for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

Our Investigator recommended that Acumen also pay Mr J £300 for the distress caused by the unsuitable advice. I don't doubt that Mr J 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 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 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 set out its proposals in a consultation document - [CP22/15-calculating redress for non-compliant pension transfer advice](#).

In this consultation, the FCA 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 J whether he preferred any redress to be calculated now in line with current guidance or wait for the new guidance / rules to come into effect. Mr J has chosen not to wait for any new guidance to come into effect to settle his complaint.

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

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

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

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

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

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr J'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 J as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to his likely income tax rate in retirement - presumed to be 20%. So, making a notional deduction of 15% overall from the loss adequately reflects this.

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

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

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

In addition, Acumen should pay Mr J £300 for the distress caused by the disruption to his retirement planning.

Where I uphold a complaint, I can award fair compensation of up to £160,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £160,000, I may recommend that the business pays the balance.

My final decision

Determination and money award: I uphold this complaint and require Acumen Independent Financial Planning Limited to pay Mr J 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 J 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 J 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 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 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 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 18 January 2023.

Ben Stoker
Ombudsman