

The complaint

Mr W complains about the advice given by Acumen Independent Financial Planning Limited to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

In March 2016, Tata Steel UK Ltd announced that it would be examining options to restructure its business including decoupling the BSPS (the DB pension scheme) from the company. The consultation with members referred to possible outcomes regarding their preserved pension 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 defined benefit pension schemes when their employer becomes insolvent. The BSPS was closed to further benefit accrual from 31 March 2017.

In May 2017, the 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 W's employer would be set up – the BSPS2.

In October 2017, members of the BSPS were sent a 'Time to Choose' letter which gave them the options to either stay in the BSPS and move with it to the PPF, move to the BSPS2 or transfer their BSPS benefits elsewhere. The deadline to make their choices was 11 December (and was later extended to 22 December 2017).

Mr W has confirmed that he elected to join the BSPS2.

Mr W approached Acumen in January 2018 to discuss his pension and retirement needs. Acumen completed a fact-find to gather information about Mr W's circumstances and objectives. This showed that he was aged 29 and lived with his partner who was the same age. They had two dependent children aged seven and two. Mr W was employed full time earning around £40,000 per year. His partner was in part time employment earning around £12,000 a year. They owned their own home that was valued at £140,000 and had an outstanding mortgage of £101,000. They also had other debt of just under £20,000 and no savings or investments.

Acumen carried out an assessment of Mr W's attitude to risk, which it said was *'highest medium or seven on a scale of one to ten'*. Mr W did confirm that he was able to take some investment risk at the time.

In respect of Mr W's pension arrangements:

Mr W had received a cash equivalent transfer value ('CETV') from the BSPS dated 13 December 2017. This showed that he had over six and a half years service. He was entitled to an annual pension of about £4,000 at retirement when he left the scheme. The CETV was about £83,500.

Mr W had also joined his employers new defined contribution ('DC') scheme. The fact find shows that he was contributing 6% of his salary into this and his employer was contributing 8%.

Acumen set out its analysis and recommendations in a suitability report. It isn't dated but I understand it was also produced in January 2018. Acumen advised Mr W to transfer his pension benefits into a personal pension and invest the proceeds in funds that met his attitude to risk.

The report said the reasons for this recommendation were that Mr W wanted to build as big a pension fund as possible over the next thirty years and to have control of how that is achieved. He wanted to have autonomy and flexibility of how he was able to access his pension funds as he approached retirement. He also wanted to provide a legacy for his family and would prefer this to be as a lump sum rather than a regular income.

Mr W complained in February 2022 to Acumen about the suitability of the transfer advice. He said that he had received a letter from the industry regulator, the Financial Conduct Authority ('FCA') which informed him that he may have received unsuitable advice to transfer. And he made his complaint after this. He said that advantages of moving to the BPS2 were not made clear to him and he said he was led to believe this option was not suitable for him.

Acumen didn't uphold Mr W's complaint. It said that the transfer was suitable and was in Mr W's best interests. Mr W's circumstances were properly and fully assessed, and he was given full information about the DB transfer.

Mr W referred his complaint to the Financial Ombudsman Service. An Investigator upheld the complaint and recommended that Acumen pay compensation. This was because he thought that the advice would likely lead to Mr W having lower retirement benefits. It was too early to plan for flexibility in his retirement and he should have been advised to concentrate on his own retirement income rather than the different death benefits a personal pension could offer.

Acumen initially didn't respond to the Investigator's opinion and so both parties were informed that an ombudsman would consider the complaint in due course.

The industry regulator, the Financial Conduct Authority ('FCA') has since developed a BPS-specific redress calculator. And Acumen has now confirmed that it would be prepared to do a loss calculation using this and pay any compensation that arises.

That said, as far as I can see, Acumen hasn't performed a loss assessment yet and agreement hasn't been reached by both sides, even though Acumen has said that in principle it will calculate if any compensation is due to Mr W. So, I've looked at whether the advice was suitable for Mr W and how Acumen should put this right if it isn't. I'm now issuing my final decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Businesses ('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.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, Acumen should have only considered recommending a transfer if it could clearly demonstrate that it was in Mr W's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

- The transfer value analysis ('TVAS') report, that Acumen was required to carry out by the regulator calculated the critical yield. This was how much Mr W's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme. The critical yield was 6.7% to match the full pension he'd have been entitled to under the scheme at age 65. To match the full pension the PPF would've paid from 65 the critical yield was 5.4%. There wasn't any analysis done for retirement at different ages, or if Mr W took tax-free cash.
- Mr W had a relatively high attitude to risk, and I can accept that given the longer time he had until retirement, that he would be prepared to take some risk. But as he had not invested before I'm not persuaded that it was in his best interests to take a significant risk with his pension benefits.
- However, considering the discount rate, that is a measure of what is a reasonable growth assumption, was 4.7% for 35 years to retirement and the regulator's projection rates, I think Mr W was always likely to receive pension benefits, from age 65, of a lower value than those he'd have been entitled to under the BPS2 or the PPF by transferring and investing in line with that attitude to risk. And if Mr W wanted to retire early it's likely that these critical yields would be higher still and he would be even more likely to receive lower benefits than either the BPS2 or the PPF.
- And the suitability report noted that transferring to a personal pension was unlikely to achieve the relevant critical yields in order to match the benefits of the DB scheme. Acumen said that, *'if the assumptions are correct you may receive a lesser amount*

by transferring'. In other words Acumen recognised that transferring would most likely mean Mr W would be worse off in retirement by transferring. So, I think the transfer wasn't in Mr W's best interests for this reason.

- Acumen said the transfer was suitable for Mr W as it allowed him to potentially retire early and to access his pension flexibly. And he was prepared to receive a lower income to do this. It is true to say the personal pension could be more flexible, as from the DB scheme Mr W would have to take any tax-free cash he wanted at the same time as he took an income. He wouldn't have had to do this in the personal pension.
- But the first problem with this is that Mr W was only 29 at the time of the advice, and based on what I've seen he, understandably, didn't have any defined retirement plans. Other than a generic want to retire early if possible. So, I don't think it was a suitable recommendation for Mr W to give up his guaranteed benefits now when he didn't know what his needs in retirement would be. I think it was too soon to make any kind of decision about transferring out of the DB scheme.
- And if Acumen had advised Mr W to stay in the BSPS2 and he decided he needed greater flexibility than the scheme provided later on, then he could have chosen to transfer from that scheme nearer to his retirement age.
- Secondly, I understand that Mr W and his employer had begun contributing to a recently set up DC pension scheme. Mr W and his employer were together contributing around 14% of Mr W's salary to that pension. Given the amounts that were being invested, that his salary and contributions would likely increase over time and investment returns would increase all of this, Mr W would likely build up a significant amount of money in the DC scheme.
- This would provide Mr W with flexibility – he wasn't committed to take the benefits in a set way. Mr W could have taken lump sums as and when required and adjusted the income he took from it according to his needs. So, I think if Mr W retained his DB pension, this combined with his new workplace pension, would have likely given him the flexibility to retire early, if that was what he ultimately decided to do.
- Overall, I'm not persuaded that Mr W needed to transfer to increase the flexibility in how he took his pension benefits at this time.
- It was documented at the time of sale that the spouse's pension the DB scheme had would not pass to his partner, as they were not married. And Mr W said he liked the idea that he could pass the fund on to his partner and maybe his children. But the priority here was to advise Mr W about what was best for his retirement.
- While the CETV figure would no doubt have appeared attractive as a potential lump sum, the sum remaining on death following a transfer was always likely to be different. As well as being dependent on investment performance, it would've also been reduced by any income Mr W drew in his lifetime. And so may not have provided the legacy that Mr W may have thought it would.
- If Mr W had wanted to provide a lump sum for his family, Acumen could've explored life insurance as an alternative. It recorded that he had disposable income through which he could've met the associated premiums. And this could've been considered on a whole of life or term assurance basis – which was likely to be cheaper. But there's little evidence Acumen did so.

- Overall, I don't think different death benefits available through a transfer justified the likely decrease of retirement benefits for Mr W. I don't think that insurance was properly explored as an alternative. And ultimately Acumen should not have encouraged Mr W to prioritise the potential for alternative death benefits through a personal pension over his security in retirement.
- I think Mr W's desire for control over how his pension was invested was overstated. I can't see that he had an interest in or the knowledge to be able to manage his pension funds on his own. And the recommendation seems to have been given on the basis he'd receive, and pay for, ongoing support with his pension. So, I don't think that this was a genuine objective for Mr W – it was simply a consequence of transferring away from his DB scheme.
- Mr W may have legitimately held concerns about how his employer had handled his pension and the prospect of entering the PPF. But it was Acumen's role to objectively address those concerns. At the time of the advice, all signs pointed toward the BSPS2 being established and Mr W had elected to join this. But even if not, the PPF still provided Mr W with guaranteed income and the option of accessing tax-free cash. Mr W was unlikely to improve on these benefits by transferring. So, entering the PPF was not as concerning as he might've thought, and I don't think any concerns he held about this meant that transferring was in his best interests.

Overall, I can't see persuasive reasons why it was clearly in Mr W's best interests to give up his DB benefits and transfer them to a personal pension. And I also haven't seen anything to persuade me that Mr W would've insisted on transferring, against advice to remain in the DB scheme. So, I'm upholding the complaint as I think the advice Mr W received from Acumen was unsuitable for him.

Our Investigator recommended that Acumen also pay Mr W £300 for the distress caused by the unsuitable advice. Mr W said that finding out that he may be worse off in retirement has caused him stress and anxiety. I don't doubt that Mr W has been caused concern in relation to his retirement planning, in what was already a difficult time for employees of the company he worked for. And I'm conscious this wouldn't have happened but for the unsuitable advice. And so, in the circumstances, I think the award the Investigator recommended is fair.

Putting things right

A fair and reasonable outcome would be for the business to put Mr W, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr W would most likely have stayed in the BSPS2 if suitable advice had been given.

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 BPS-specific redress calculator to calculate the redress. A copy of the BPS calculator output should be sent to Mr W and our Service upon completion of the calculation together with supporting evidence of what Acumen based the inputs into the calculator on.

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

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 W'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 W redress as a cash lump sum payment,
- explain to Mr W before starting the redress calculation that:
 - his 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 his redress prudently is to use it to augment his DC pension
- offer to calculate how much of any redress Mr W receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr W accepts Acumen's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr W for the calculation, even if he ultimately decides not to have any of his redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr W's end of year tax position.

Redress paid to Mr W 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 W'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.

Acumen should pay Mr W £300 as compensation for the distress the poor advice caused him.

Where I uphold a complaint, I can award fair compensation of up to £170,000, 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 £170,000, 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 W the compensation amount as set out in the steps above, up to a maximum of £170,000.

Recommendation: If the compensation amount exceeds £170,000, I also recommend that Acumen Independent Financial Planning Limited pays Mr W the balance.

If Mr W 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 W can accept my decision and go to court to ask for the balance. Mr W 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 W to accept or reject my decision before 29 November 2023.

Andy Burlinson
Ombudsman