

## **The complaint**

Mr T 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 T'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 T'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 T 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 in November 2017 were broadly as follows:

- Mr T was 46 years old, married with dependent children. The suitability report produced by Acumen recorded his health as "good".
- The cash equivalent transfer value (CETV) of Mr T's BSPS was approximately £386,372. The normal retirement age (NRA) was 65.
- Mr T had recently joined a defined contribution pension scheme with his employer as a consequence of the BSPS closing to ongoing contributions.

Acumen then set out its advice in a suitability report. In this it advised Mr T to transfer out of the BSPS and invest the funds in a type of personal pension plan. Acumen said this would allow Mr T to achieve his objectives. Mr T accepted this advice and so transferred out several weeks later. In 2022 Mr T complained to Acumen about its advice, saying he shouldn't have been advised to transfer out to a personal pension. However, Acumen didn't uphold his complaint.

Mr T later referred his complaint to the Financial Ombudsman Service. One of our investigators looked into the complaint and said it should be upheld.

I've noted that whilst Acumen originally said it didn't accept it had acted unsuitably by advising Mr T to transfer his pension, it then accepted the investigator's 'view' and agreed to carry out a redress calculation to establish whether Mr T had incurred any losses by transferring away. It said, "*we will try and settle this case if you can confirm on what basis we need to calculate the redress on*". And there then followed some attempts to obtain the value of Mr T's transferred funds to start the redress calculation process off.

However, in the meantime the Financial Conduct Authority (FCA) issued a direction to firms involved in these types of complaints that they should calculate redress using a BPS-specific calculator which it had produced. My understanding is that Acumen has agreed to use this calculator but as yet has not done so; it says it is awaiting relevant information from a third-party about Mr T's pension value.

The complaint has been passed to me and I'm issuing a final decision as in my view Mr T has been kept waiting too long. Acumen accepts it needs to use the method endorsed by the FCA to calculate whether any redress is due and it now needs to carry this out promptly.

### **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 Businesses ('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, on contemporary evidence, that the transfer was in Mr T's best interests.

I've used all the information we have to consider whether transferring away from the BSPS to a personal pension was in Mr T's best interests. I have also carefully considered the final response letter from Acumen. I've carefully considered too, the reasons it has given for not yet calculating whether Mr T has incurred any losses as a result of being advised to transfer away.

### Why I'm upholding the complaint

Because I now know Acumen has agreed to carry out a loss calculation in line with the approach being promoted by the FCA, I therefore don't see the need to address the suitability of Acumen's advice to Mr T in quite the same detail as I would normally. However, to be clear, Acumen's transfer advice was unsuitable for the following reasons:

- At the age of 65, which in this case was the NRA, the critical yield (the investment return required to replicate the benefits available to him through the BSPS2) was 7.9%. If using the PPF as a comparison, and still assuming a retirement at 65, the critical yield was 4.9%. Conversely, the discount rate was only 4.4% (for just under 18 years to retirement). So, I think this was already showing that by transferring away from the DB scheme, Mr T was unlikely to be able to grow his pension to a degree which made transferring financially viable.
- I've kept in mind that the regulator's upper projection rate at the time was 8%, the middle projection rate was 5%, and the lower projection rate was 2%. I've also considered the higher costs associated with a personal pension and that Mr T's very limited knowledge of investing would have probably required on-going support and management from a professional adviser. I think these additional costs would have reduced potential growth even further. So, everything I've seen shows – that when viewed from the contemporary point of advice – Mr T would likely receive lower pension benefits in the longer term as a result of transferring away from the DB scheme. He was only a moderate risk investor and Acumen acknowledges this in its own recommendation report from the time.
- I've noted too, that the transfer analysis said that the capital value needed to purchase death benefits of a similar nature to the DB scheme would be £658,709. In my view, these figures provide a revealing window into the value of the scheme Mr T was being advised to give up.
- I've also considered some projections Acumen used to help show that if he transferred out to a personal plan, the funds could last Mr T well into retirement. It's fair to say these were not comparing like-with-like. What Acumen was showing Mr T were comparisons with plans which lacked the guarantees and benefits of a DB scheme. These also ran out at certain points, whilst his DB pension was for life.
- I've seen nothing that showed Mr T required changing how his retirement benefits ought to be paid. He already had a new and more flexible DC pension with his existing job. This DC pension was being significantly contributed towards by both Mr T and his employer. There's no reason why by retirement this DC pension couldn't have contained a significant sum. So, this other pension would have afforded Mr T any flexibility he might have needed.
- This means I've seen nothing explaining why Mr T wouldn't want to continue membership of a DB scheme and to use that scheme in exactly the way it was originally intended. Indeed, I think that by retirement, whenever it eventually came, Mr T could have been in an agreeable position. On one hand he'd have an existing deferred DB scheme of reasonable 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 BPS2 and the scheme was still underpinned by the PPF. On the other hand, he had a new (DC) pension which he and his employer would likely be contributing to for many more years. So, if Mr T ever found he needed any 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 T had either the capacity or desire to exercise control over his funds. I think he would have found the complexity, scale and responsibility of managing over £380,000 of transferred funds to be onerous in the years ahead. What I've seen tends to show Mr T would have required ongoing financial advice and support, all of which would cost him money which his DB scheme didn't require from him.
- The BPS2 contained certain benefits payable to a spouse and children if Mr T died. Mr T was married so I think the value of these benefits were most likely underplayed because the spouse's pension provided by the BPS2 would have been useful to Mrs T if he predeceased her.
- I also think the adviser told Mr T that he'd be able to pass on the whole value of a personal pension, potentially tax-free, to anyone that he nominated. So the lump sum death benefits on offer through a personal pension were probably made to look like an attractive feature to Mr T. But this needed carefully explaining; the priority here was to advise him about what was best for his retirement provisions. 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 T had lived a long life there could be nothing left at all in his personal pension plan. It also doesn't appear that Acumen took into account the fact that Mr T could have nominated a beneficiary of any funds remaining in his other (DC) scheme. He could also have taken out a modest 'term' life insurance policy if he wanted to leave a lump-sum legacy to his wife or children. At only 46 years old this would still have been affordable. So, to this end, Mr T already had options ensuring part of his pension wouldn't 'die with him'.
- It's clear that Mr T, like many employees of his company, was concerned about his pension. However, even if there was a chance the BPS2 wouldn't go ahead, I think that Acumen should have reassured Mr T that the scheme moving to the PPF wasn't as concerning as he thought. The income available to Mr T 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.

### Summary

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

He was giving up a guaranteed, risk-free and increasing income within the BPS2. By transferring to a personal pension, the contemporary evidence showed Mr T was likely to obtain lower retirement benefits. Flexibility was not defined and in my view it was no more than a 'stock' objective used to help justify the transfer. Valuable death benefits were being lost by transferring away 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 these reasons, particularly as it meant he'd be worse off in retirement. So I don't think it was

in Mr T's best interests for him to transfer his DB scheme to a personal pension when he had the opportunity of opting into the BSPS2.

On this basis, I think Acumen should have advised Mr T to opt into the BSPS2. In light of the above, I think Acumen should compensate Mr T 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 T, as far as possible, into the position he would now be in but for Acumen's unsuitable advice. I consider Mr T would have most likely opted to join the BSPS2, rather than transfer to the personal pension if he'd been given suitable advice and 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 T and the financial ombudsman 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 T'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 T redress as a cash lump sum payment,
- explain to Mr T before starting the redress calculation that:
  - the 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 the redress prudently is to use it to augment the DC pension
- offer to calculate how much of any redress Mr T receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr T accepts Acumen's offer to calculate how much of the redress could be augmented, request the necessary information and not charge Mr T for the calculation, even if he ultimately decides not to have any of the redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr T's end of year tax position.

Redress paid to Mr T 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 T'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 £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. *I should clearly state here that these are maximum limits and they are highly unlikely to be relevant to the redress Mr T might or might not be due.*

Our investigator recommended that Acumen should pay Mr T for the distress and inconvenience caused by the unsuitable advice. I have considered the impact this would likely have had on Mr T in his particular circumstances. This pension at the time represented almost all of his retirement provision. In his situation I think the thought of losing material benefits would have impacted heavily upon him. So I agree the recommended payment of £300 for distress and inconvenience is fair and reasonable. Acumen should pay Mr T this amount in addition to the redress, if a loss exists, as I've set out above.

### **My final decision**

I am upholding this complaint and I now direct Acumen Independent Financial Planning Limited to pay Mr T the compensation amount, if a loss is identified, as set out in the steps above.

Acumen should also pay £300 for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 21 February 2024.

Michael Campbell  
**Ombudsman**