

The complaint

Mr E complains about the advice given by Acumen Independent Financial Planning Limited ('Acumen') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme, the British Steel Pension Scheme ('BSPS'), to a personal pension. He is concerned the advice may have been unsuitable for him and could've caused him a financial loss.

What happened

Mr E held benefits in the BSPS. In March 2016, Mr E's employer announced that it would be examining options to restructure its business including decoupling the BSPS (the employers' 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.

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 E's employer would be set up – the BSPS2.

The RAA was signed and confirmed in August 2017 and the agreed steps were carried out shortly after. Updated transfer valuations were then provided by the BSPS trustees to qualifying members, reflecting the improved funding position – with the cash equivalent transfer value ('CETV') of Mr E's pension being £398,175.27. And 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.

Mr E contacted Acumen in late 2017 for advice about his pension. Acumen completed a fact-find to gather information about Mr E's circumstances and objectives. Amongst other things it recorded that he was 49, married to Mrs E who was 46 and had two children. Mr E was employed full time and in addition to the benefits he held in the BSPS scheme, he was also a member of his employer's new defined contribution ('DC') pension. It noted that Mr E was interested in potentially retiring at age 58 and may need an income of £1,300 per month in retirement.

Acumen also carried out an assessment of Mr E's attitude to risk, which it deemed to be 'medium' or five on a scale of one to ten, with one being lowest risk and ten highest. This assessment said the target portfolio for a 'medium' risk profile investor had an estimated annual growth rate of 2.52%. However, it was also recorded in the risk profile document that, having discussed this with Mr E, investing in assets across risk profiles three to five was more appropriate – so at a lower risk level than 'medium'.

I've seen evidence that applications to transfer Mr E's BSPS pension were completed on 10 January 2018. After that, on 16 January 2018, Acumen sent Mr E a copy of its suitability report explaining its recommendation. In this Acumen said it advised Mr E to transfer his

pension benefits into a personal pension with a named provider. It said the rate of return required to replicate the guaranteed benefits Mr E was giving up was unlikely to be achieved. But Acumen said it assumed Mr E's desire to live on a lower-level income, have flexibility and control over when his benefits were payable and the alternative lump sum death benefits the transfer provided was a higher priority objective for him. And the transfer met these objectives.

The transfer went ahead in line with Acumen's recommendation.

Mr E complained in 2022 to Acumen as he was concerned that the advice was potentially unsuitable. Acumen didn't uphold Mr E's complaint. It said it had taken reasonable steps at the time to satisfy itself that the transfer was suitable.

Mr E referred his complaint to the Financial Ombudsman Service. He said he was concerned whether he'd made the right decision to transfer and he wondered if the advice he'd been given was correct. So, Mr E said he wanted Acumen to undertake a redress calculation in relation to the advice.

An Investigator considered the complaint and said they thought it should be upheld as they didn't think the advice to transfer was in Mr E's best interests. So, the Investigator said Acumen should carry out a redress calculation, compensate Mr E for any losses caused by the unsuitable advice and pay him £300 for the distress he'd been caused.

Acumen disagreed. It said Mr E had been provided with clear information and was happy, at the time, with the choice he'd made to transfer.

The Investigator wasn't persuaded to change their opinion, so the complaint was referred for an Ombudsman's decision.

Acumen then said that it had carried out a full redress calculation and no redress was due to Mr E. But it said that it was willing to make the payment for distress the Investigator had recommended. However, the complaint was not resolved as a result of this.

The FCA has since developed a BSPS-specific redress calculator. Although the calculator has been developed for the BSPS consumer redress scheme, it can still be used to carry out calculations in non-scheme cases, such as Mr E's complaint with the Financial Ombudsman Service. Our Investigator informed both Mr E and Acumen, in May 2023, that if an Ombudsman's decision was required and they upheld the complaint, they may require Acumen to calculate any redress due using the FCA BSPS-specific calculator.

More recently, Acumen confirmed that it was willing to run a further redress calculation, using the FCA's BSPS specific calculator. Information was obtained from Mr E and his current pension provider to enable this to be completed.

The updated calculation again indicated that Mr E had not suffered a loss as a result of Acumen's advice. So, it said no redress was due, apart from the payment for distress.

I shared the calculation summary with Mr E and explained that, based on what I'd seen, I believed the calculation had been carried out correctly. I said I understood that Acumen was still willing to make the payment for distress that the Investigator had recommended, which I thought was fair. So, I asked Mr E if he accepted this offer.

Mr E said he was only willing to accept the result if Acumen also refunded him the fee he'd paid for the initial advice, as this had been considered to be unsuitable, in addition to the £300 offered.

As an agreement could not be reached, I'm now providing a final decision on the matter.

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.

Although Acumen didn't agree with the Investigator's opinion, it has carried out a loss calculation and indicated it is willing to pay Mr E the £300 the Investigator recommended for the distress caused, to resolve matters. So, it has agreed to put things right, in the way that the Investigator felt was fair.

With this in mind, what is effectively left to decide is if the offer made is fair and reasonable. For the avoidance of doubt though, I have thought about the advice given. And 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 - including the Principles for Businesses ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And, having done so, I agree with our Investigator's view that the advice was unsuitable, for broadly the same reasons.

Acumen says that its adviser was only required to take reasonable steps to ensure the advice was suitable for Mr E. I agree that under COBS, Acumen was required to take reasonable steps to ensure that its personal recommendation to Mr E was suitable for him (COBS 9.2.1). But it was also required, under COBS 2.1.1R to ensure it acted in accordance with his best interests and additional regulations and guidance apply to advising on transferring out of DB schemes (COBS 19). These say that the starting assumption for a transfer from a DB scheme is that it is unsuitable. And that Acumen should only have considered recommending a transfer out of the scheme if it could clearly demonstrate that the transfer was in Mr E's best interests (COBS 19.1.6G). And having looked at all the evidence available, I'm not satisfied it was in his best interests. I'll briefly explain why.

- There would be little point in Mr E giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme.
- Acumen was required by the regulator to instruct a transfer value analysis ('TVAS'). This included the calculation of critical yields - how much Mr E's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme at retirement.
- I can see that Acumen did instruct TVAS reports although I think there were flaws with these. Acumen suggested Mr E may want to retire from age 58 – although the suitability report did note his thoughts on this may change in the future. But it didn't calculate the critical yields required to match the benefits Mr E would've been entitled to if he'd retired early under the scheme – which was an option for him. The TVAS report also only looked at the benefits the existing BPS and the PPF would provide. No analysis was undertaken in respect of the benefits the BPS2 offered – which I think would've been appropriate as remaining in the BPS, as it was, wasn't an option for Mr E.
- Acumen has said the BPS2 wasn't confirmed. But details of how the new scheme would function, if it went ahead, were provided during the time to choose exercise. So, I'm satisfied an analysis was possible. And I think Acumen is overstating the chances of this not happening at the time. There had been a number of key announcements that all pointed toward the BPS2 being established. The

restructuring of the BSPS had been ongoing for a significant amount of time by the point it gave advice. Actions had been agreed with the pension's regulator and carried out as scheduled – not least a significant lump sum payment into the BSPS which enabled the provision of improved transfer value quotations. And members had been sent “time to choose” letters, with opting into the BSPS2 one of the options offered to them. 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.

- Those notwithstanding, even the limited analysis undertaken in the TVAS, in my view, doesn't support that a transfer was in Mr E's best interests.
- To match the benefits the BSPS would provide from the normal scheme retirement age, 65, the critical yield was estimated as being from 8 – 8.5%. And to match the benefits the PPF would pay Mr E from age 65, the critical yield was between 4.8 – 4.9%. While the critical yield to match the benefits of the BSPS2 wasn't calculated, based on what we know about the benefit structure of the scheme, I think it's reasonable to assume these would've been between those of the BSPS and the PPF at age 65.
- The risk assessment Acumen produced said the estimated potential annual growth for a portfolio matching Mr E's risk profile was 2.52%. Considering this, the fact that it was agreed that it was appropriate to spread Mr E's pension across funds with a lower risk than the 'medium' attitude to risk that had been suggested, the regulators standard projection rates and the discount rate at the time of 4.3% for 15 years to retirement, I don't think Mr E was likely to be able to exceed the guaranteed benefits he was giving up by transferring. And, if retiring early was a genuine objective, the critical yields were likely to be higher - because benefits would have to be paid for longer and the investment horizon to retirement was shorter. So, in my view were even less likely to be achieved.
- And Acumen acknowledged this in its suitability report saying the critical yields “are unlikely to be achievable” so Mr E “may receive a lesser amount by transferring” and “from an investment perspective the transfer is likely not feasible”.
- Acumen indicate that it assumed flexibility, alternative death benefits and a desire to “take a lower level of income” were more important to Mr E. But I don't think any of these things meant that a transfer was in his interests.
- Even if Mr E had suggested he wanted to receive less income than the DB scheme guaranteed – which I find unlikely – transferring meant that his pension was subject to market risk and investment growth would need to be sustained or there was a risk it could run out, leaving him with insufficient provisions for his retirement.
- I don't think Mr E had a genuine need for flexibility. He was only 49 at the time of the advice, still some time from retirement. And while I accept, he may've indicated a preference to retire at age 58, the suitability report also recorded that his thoughts on this could change. So, I don't think his plans were finalised. Mr E could also have taken benefits from age 58 under the BSPS2 or the PPF. So, he didn't need to transfer in order to access his benefits early. And while the suitability report suggested that he intended to potentially withdraw a lump sum from his pension at ages 58 and 62, there was no reason for this recorded. So, I'm not sure this was a genuine objective. And the benefits he was continuing to accrue through his employer's new DB scheme provided him with some flexibility at retirement had he needed this. So overall, I think it was too soon for an irreversible decision to transfer out of his DB scheme for flexibility in his pension arrangements to be considered in

his best interests. Particularly when the BSPS2 would've still provided the option to transfer out at a later date if his circumstances required it.

- Acumen said the lump sum death benefits a personal pension offered appealed to Mr E. But the priority here was to advise Mr E about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement.
- The DB scheme already provided a spouse's pension. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. And the sum remaining in a personal pension was always likely to be different to the CETV. So, while this no doubt was appealing as a potential lump sum, the pension was unlikely to provide this level of legacy – as it would be depleted by any benefits Mr E drew in his lifetime. Given there was no suggestion he suffered from ill health, it's reasonable to assume Mr E was likely to rely on the pension to meet his needs in retirement, and that his withdrawals may've substantially eroded the pension fund by the time it came to be passed on.
- If Mr E genuinely wanted to leave a legacy for his family, Acumen could've instead explored life insurance. But I can't see that this was considered.
- Overall, I don't think different death benefits available through a transfer meant it was in Mr E's best interests. And ultimately Acumen should not have encouraged Mr E to prioritise the potential for alternative death benefits through a personal pension over his security in retirement.
- Acumen said that Mr E was concerned at the prospect of his pension moving to the PPF. And I don't doubt he had heard negative things about this. But that was why it was even more important for Acumen to provide objective advice. Notwithstanding that the BSPS2 was being established as an alternative, the PPF still provided Mr E with a guaranteed income and the option of accessing his benefits early. As I've explained, Mr E 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 E's best interest to give up his DB benefits and transfer them to a personal pension.

Acumen has said Mr E was given information about the advantages and disadvantages and seemed happy with his decision at the time. But, from what I've seen, Mr E was an inexperienced investor who contacted Acumen for its expert opinion. Ultimately Acumen advised him to transfer out of the BSPS. And I think Mr E relied on that advice. If Acumen, a professional adviser whose expertise he had sought, had explained why it wasn't in his best interests to transfer I think he'd have accepted that advice.

Putting things right

As I explained, the main point of contention now is what a suitable way to put things right is.

As I think Mr E has received unsuitable advice, the aim of any recommendation would be to put him, as far as possible, in the position he would've been in but for that advice. Mr E cannot though return to the BSPS. So, the aim is to put Mr E back in the financial position he would have been in at retirement had he remained in the DB scheme. For which the FCA developed a calculator, specific to the BSPS. And Acumen has now carried out a calculation using that calculator. This is what I would expect it to do in the circumstances.

The calculator uses economic and demographic assumptions to calculate how much a consumer needs in their pension arrangement to secure equivalent BSPS retirement benefits that they would have been entitled to under either BSPS2 or the PPF (as uplifted to reflect the subsequent buy-out), had they not transferred out.

If the calculation shows there is not enough money in the consumer's pension arrangement to match the BSPS benefits they would have received, the shortfall is the amount owed to the consumer. If the calculation shows there is enough money in the consumer's pension arrangement, then no redress is due.

The BSPS calculator has been developed by actuaries and is programmed by the FCA with benefit structures of the BSPS, BSPS2 and PPF (including the impact of the subsequent buy-out) and relevant economic and demographic assumptions which are updated regularly. This information can't be changed by firms.

The calculator also makes automatic allowances for ongoing advice fees of 0.5% per year and product charges of 0.75% per year which are set percentages by the FCA.

I have checked the inputs that were entered by Acumen which are personal to Mr E. These include Mr E's personal details, his individual benefits from the BSPS at the date he left the scheme and the value of his personal pension. All of which appear to have been input correctly. The calculation also assumes that if he had not been advised to transfer his benefits from the BSPS, he would have moved to the BSPS2 and that he would have taken his DB benefits at age 65 – which I think is fair here as Mr E's retirement plans were unconfirmed. And this is in line with the recommendation of the Investigator and what the regulator says should be the usual starting assumption.

Overall, based on what I've seen, the calculation has been carried out appropriately and in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in the FCA's policy statement PS22/13 and set out in their handbook in DISP App 4: <https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter>.

The calculation in Mr E's case shows that there is no shortfall to his pension and that he has sufficient funds to be able to replicate his DB benefits in retirement. So, I'm satisfied that Mr E has not suffered a financial loss by transferring his pension. And as an appropriate calculation has now been carried out by Acumen, I don't think it needs to do anything further in respect of any potential financial loss.

Acumen indicated it agreed to pay Mr E the £300 our Investigator recommended for the distress this has caused. And I think it is fair that it does so.

Mr E received advice from Acumen in January 2018. He first complained about that advice in early 2022. I haven't seen anything that suggests the advice caused him ongoing distress during that period as the first indication he potentially had any concerns about the advice seems to have been when he raised his complaint, which I understand was after he received a letter from the FCA suggesting he might've been given incorrect advice.

I don't doubt, given the circumstances and uncertainty under which he asked for advice, thinking about this potentially being wrong has likely caused him some concern, since he raised his complaint. Which is likely in my view to have been more than the levels of frustration and annoyance you might reasonably expect from day-to-day life. But our role is not to fine or punish Acumen. And the calculation Acumen has carried out should reassure him that he has not suffered a loss. So, in the circumstances, I think the award of £300 to reflect the distress caused by the advice, as recommended by the Investigator, is fair.

Mr E has said that he believes Acumen should be required to also refund the fee he paid for advice, as we have concluded this was unsuitable. But, although I believe the advice was unsuitable, Acumen did provide a service to Mr E, which included a considerable amount of analysis on its part. It's usual for firms to expect to be paid for that work, even where their recommendation is not to transfer. In addition, the redress calculation compares the value of Mr E's personal pension against the cost of purchasing the DB benefits on the open market. As the transfer fees reduced the starting value of Mr E's personal pension from the outset, they also reduced its current value. So those have already been factored into the calculation. If he had suffered a loss, then Acumen would have compensated him appropriately. But that's not the case here as the most recent calculation shows that Mr E has over £117,000 more in his personal pension than he requires to replicate his DB benefits. As a result, I don't think it would be fair to instruct Acumen to refund the fees, particularly as those are factored into the redress calculation.

My final decision

I uphold this complaint and require Acumen Independent Financial Planning Limited to pay Mr E £300, as it has previously suggested it would, for the distress this matter has caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 9 February 2024.

Ben Stoker
Ombudsman