

The complaint

Mr P 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 he would be in a better, and more secure, position if he had remained in the DB scheme. He says 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 P'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 P approached Acumen in January 2018 to discuss his pension and retirement needs. He was also concerned about the situation with his employer and the BSPS.

Acumen recorded that Mr P had elected to join the BSPS2 whilst he was receiving advice about his pension arrangements.

Acumen completed a fact-find to gather information about Mr P's circumstances and objectives. This showed that Mr P was aged 28 and married. He had no dependent children. He was employed full time earning around £30,000 a year plus overtime. He held around £10,000 on deposit. Mrs P was also working full time and a contributing member of a DB scheme. She held an investment portfolio with a value of around £100,000. They owned their own home which was subject to a mortgage.

Acumen also carried out an assessment of Mr P's attitude to risk, which said was 'six on a scale of one to ten or medium - high'. His capacity for loss was recorded as being 'small'.

In respect of Mr P's pension arrangements:

Mr P had received a cash equivalent transfer value ('CETV') from the BSPS in October 2017. This showed that he had over eight years service in the BSPS. He was entitled to a

pension of about £3,800 per year at the date of leaving the scheme. The CETV was about £79,900.

Mr P had also joined his employers new defined contribution ('DC') scheme. He was contributing 6% of his salary into this and his employer was contributing 10%.

On 9 February 2018, Acumen advised Mr P to transfer his pension benefits into a personal pension and invest the proceeds in funds that it said matched his attitude to risk. The suitability report said the reasons for this recommendation were:

- To help Mr P retire early, possibly at age 58.
- He was keen to provide a legacy for his wife.
- He wanted to have value for money and flexibility and he was prepared to forego the guaranteed income in order to potentially access his pension early or when he wanted to.
- He had concerns about the long-term operation of his employer.

Mr P complained in May 2022 to about the suitability of the transfer advice. He said that he was of the sound belief that he would have been in a better more secure financial position if he had moved to the BSPS2. He didn't think the downsides to the personal pension were made clear.

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

Mr P referred his complaint to the Financial Ombudsman Service. An Investigator upheld the complaint and recommended that Acumen perform a loss assessment, and pay compensation, if this showed that Mr P had suffered a loss due to the transfer. This was because he thought that the advice would likely lead to Mr P 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 BSPS-specific redress calculator. And Acumen has now confirmed that it would be prepared to do a loss calculation using this calculator.

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 P. So, I've looked at whether the advice was suitable for Mr P and how Acumen should put this right if it isn't.

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.

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 a transfer if it could clearly demonstrate that the transfer was in Mr P's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

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. I'll explain why.

- The transfer value analysis ('TVAS') report, that Acumen was required to carry out by the regulator, said that the critical yield - how much Mr P's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme – 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 P took tax-free cash.
- Despite the fact it was known by the point Acumen instructed the TVAS that continuing in the BPS in its existing form wasn't an option for Mr P, the analysis was based on the BPS benefits. And Acumen didn't undertake any analysis of the benefits he'd have been due under the BPS2, even though details were available and Mr P had elected to join the BPS2. I think it should've done this. In any event, given what we know about the BPS2, I think the critical yields to match the benefits the BPS2 would've provided from age 65 were likely to be between those of the BPS and the PPF.
- Given Mr P's recorded 'balanced' attitude to risk, the discount rate of 4.7% for 36 years to retirement and the regulator's middle projection rate, I think Mr P 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 P 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, *'from an investment perspective the transfer wasn't feasible'*. In other words Acumen recognised that transferring would most likely mean Mr P would be worse off in retirement by transferring. So, I think the transfer wasn't in Mr P's best interests for this reason.
- Acumen said the transfer was suitable for Mr P 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 P 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 P 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 P 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 P 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 P and his employer had begun contributing to a recently set up DC pension scheme. Mr P and his employer were together contributing around 16% of Mr P's salary to that pension. Given the amounts that was being invested, that his salary and contributions would likely increase over time and investment returns would increase all of this, Mr P would likely build up a significant amount of money in the DC scheme.
- This would provide Mr P with flexibility – he wasn't committed to take the benefits in a set way. Mr P 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 P 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 P needed to transfer to increase the flexibility in how he took his pension benefits at this time.
- Acumen said Mr P was keen to provide a legacy for Mrs P. But the priority here was to advise Mr P about what was best for his retirement. And as a start the existing scheme offered death benefits, by way of a spouse's pension, that could've been valuable to his wife in the event of his death.
- 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 P drew in his lifetime. And so may not have provided the legacy that Mr P may have thought it would.
- Furthermore, Mrs P doesn't seem to have been dependent on Mr P's income. She was employed full time herself and had her own significant investment portfolio and

DB pension provision. And whilst it can be problematic to rely on potential inheritances it was noted that she was expecting to receive over a million pounds in the future from her family. Overall, I don't think there was any need for Mr P to provide a legacy here, such that it was reasonable to advise him to limit his own retirement provisions in order to provide this.

- But if Mr P had still wanted to do this, Acumen could've explored life insurance as an alternative. 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 P. I don't think that insurance was properly explored as an alternative. And ultimately Acumen should not have encouraged Mr P to prioritise the potential for alternative death benefits through a personal pension over his security in retirement.
- I also think Mr P'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 P – it was simply a consequence of transferring away from his DB scheme.
- Mr P 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 BPS2 being fully established. But even if not, the PPF still provided Mr P with guaranteed income and the option of accessing tax-free cash. Mr P 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 P'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 P 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 P received from Acumen was unsuitable for him.

Our Investigator recommended that Acumen also pay Mr P £300 for the distress caused by the unsuitable advice. I don't doubt that Mr P has been caused distress and concern in relation to his retirement planning. Finding out that he may receive less in retirement would have caused him some distress as he says. And this is particularly given the circumstances under which the transfer took place. 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 P, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr P would most likely have remained in the occupational pension scheme and moved to the BPS2, as he'd already chosen to do, 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 BSPS-specific redress calculator to calculate the redress. A copy of the BSPS calculator output should be sent to Mr P and the Financial Ombudsman Service upon completion of the calculation together with supporting evidence of what Acumen based the inputs into the calculator on.

For clarity, Mr P 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 P'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 P redress as a cash lump sum payment,
- explain to Mr P 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 P receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr P accepts Acumen's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr P 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 P's end of year tax position.

Redress paid to Mr P 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 P'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 P £300 for the distress and inconvenience its advice gave 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 P 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 P the balance.

If Mr P 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 P can accept my decision and go to court to ask for the balance. Mr P 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 P to accept or reject my decision before 17 November 2023.

Andy Burlinson
Ombudsman