

The complaint

Mr P 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 P'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 P's employer would be set up – the BSPS2.

In 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 P 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 and objectives at the time of the recommendation were broadly as follows:

- Mr P was 40 years old and was then married. He had accrued several years' worth of service with BSPS.
- The cash equivalent transfer value (CETV) of Mr P's BSPS was approximately £252,385. The normal retirement age (NRA) was 65.
- Mr P was contributing to a new defined contribution (DC) pension scheme. This pension isn't the subject of any complaint.

Acumen set out its advice in a suitability report in February 2018. In this it advised Mr P to transfer out of the BSPS and invest the funds in a type of personal pension plan. Acumen said this would allow Mr P to achieve his objectives. Mr P accepted this advice and so transferred out. In 2022 Mr P complained to Acumen about its advice, saying he shouldn't have been advised to transfer out to a personal pension but the business didn't uphold his complaint.

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

As the complaint couldn't be informally resolved, it came to me for a 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.

As I've said above, Acumen didn't originally agree it had done anything wrong. However, in the interest of bringing complaints like this to a close, Acumen said back in the first half of 2023, it would accept the investigator's view and be willing to run a calculation to see if the pension transfer had incurred any loss for Mr P.

Acumen used a BSPS-specific calculator established by the regulator for this purpose. I've noted it took Mr P's transferred pension's then current value and inputted this into the calculator together with all his personal details. Mr P's original transferred pension balance has been affected by a pension sharing order since he transferred and this amount has been factored into the overall calculation. Otherwise, his transferred pension value has broadly grown and so the calculation shows there has been no financial loss incurred as a result of Mr P transferring away, back in 2018. The 'no loss' outcome exists whether comparing with the benefits found in the BSPS2 or the PPF. But Mr P's representative said that he still wanted a final decision made by an ombudsman even though Acumen had calculated the redress as per the investigator's view.

For the avoidance of any doubt here, I've still looked at Mr P's case and his points of complaint in great detail. Having done this, I agree with the points made by our investigator who comprehensively set out why they thought the complaint ought to be upheld. I'm also sorry that it's taken so long for Mr P's complaint to reach this stage – I understand the distress and inconvenience caused by him having to bring the complaint at all.

However, because Acumen has previously informed us that it is willing to accept the investigator's view that the advice wasn't right for Mr P, and that a calculation has been carried out as required by the regulator, I'm not going to go into the level of detail I normally would about why the complaint should be upheld.

However, as of June 2023, I think Acumen had done enough to bring the complaint to a close using an approach which is fair and reasonable.

I've noted, for example, that as far back as 30 June 2023 Mr P's representative confirmed it had received Acumen's use of the BPS calculator which had showed 'no loss' and was taking instructions from Mr P. It also said it expected to reply to this within two weeks which means this would still be in close proximity to the calculation itself. So, it's not clear to me why Mr P's representative then said that Acumen hadn't accepted responsibility. I think it had – and I think the complaint should have been settled at that point because Acumen had already complied fully with both what we'd asked it to do, and also with the regulator's approach to resolving these types of cases. But in the event, the case went into a queue for an ombudsman's decision. In reality this could only mean a substantial delay and ultimately, a final decision directing Acumen to do what it had already done.

I can understand that consumers like Mr P might have an expectation that, because they received unsuitable advice, they must have suffered a financial loss as a result. But that's not always the case. And the purpose of the redress calculation, as set out by the FCA, is not to put consumers like Mr P into a better position than they would have been in had they

not transferred. Instead, the aim is to put them back in the financial position they would have been in at retirement had they remained in the DB scheme.

In my view, Acumen carried out its calculations using the specific BPS calculator provided by the FCA, which is what I would expect it to do in the circumstances. The calculations themselves are fairly complex. They include assumptions about future market conditions, interest rates and investment returns. And as those assumptions are susceptible to market forces, the FCA updates them on a regular basis. I understand that the aim of the FCA's redress methodology is to produce results comparable to how a court would award damages in similar circumstances. In this case, there was a further issue relating to the pension sharing order and the fact that Mr P is now deemed single, rather than married but this was all set out in Acumen's calculation in June 2023 explaining there was no financial loss.

Summary

As for the merits of the complaint, I don't think the advice given to Mr P was suitable. He was giving up a guaranteed, risk-free and increasing income within either the BPS2 or PPF. I don't think there were any other particular reasons which would justify the transfer and outweigh this. Acumen ought to have originally advised him against transferring away from the BPS.

However, as I don't think I need to consider this in any further detail, I'll now focus on the redress methodology.

Putting things right

The aim is to put Mr P back in the financial position he would have been in at retirement had he remained in the DB scheme. I am satisfied that Acumen has carried out a calculation using a BPS-specific calculator provided by the FCA and it has already shared this with ourselves and Mr P.

The calculator uses economic and demographic assumptions to calculate how much a consumer needs in their pension arrangement to secure equivalent BPS retirement benefits that they would have been entitled to under either BPS2 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 BPS 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 BPS calculator has been developed by actuaries and is programmed by the FCA with benefit structures of the BPS, BPS2 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 P. These include Mr P's personal details, his individual benefits from the BPS at the date he left the scheme and the value of his personal pension. The calculation used two assumptions. Firstly, that if he had not been advised to transfer his benefits from the BPS, he would have moved to the BPS2 and that he would have taken his DB benefits at age 65. It carried out the same calculation but using the PPF.

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 two calculations in Mr P'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 compared to either scheme (BSPS2 / PPF). I'm afraid the surplus is considerable in both cases, so taking everything I've said above, I'm satisfied that Mr P has not suffered a financial loss by transferring his pension and I don't think it is fair or reasonable to carry out yet another calculation. Given all the figures I've seen, including very recent ones, there is no financial loss evident. I have checked all these figures with great care.

Our investigator recommended that Acumen should pay Mr P for the distress and inconvenience caused by the unsuitable advice. Acumen has already said it's willing to pay this. So I agree the recommended payment of £200 for distress and inconvenience. Acumen should now go ahead and pay Mr P this if it hasn't already done so.

I think the calculation carried out by Acumen is appropriate in the circumstances and no other redress for financial losses is due to Mr P.

My final decision

I uphold this complaint and require Acumen Independent Financial Planning Limited to pay Mr P a sum of £200 for the distress and inconvenience he says this matter has caused him if it hasn't already done so.

Acumen Independent Financial Planning Limited doesn't need to do anything else.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 18 February 2024.

Michael Campbell
Ombudsman