DRN-3891022

The complaint

Mr M complains about the suitability of the advice provided by Acumen Independent Financial Planning Limited ("Acumen") in January 2018 to transfer the value of his safeguarded benefits in the British Steel Pension Scheme ("BSPS") to a personal pension plan ("PPP").

Mr M is represented in this complaint by a family member (who I shall refer to as "the Representative").

What happened

Mr M built up safeguarded benefits in the BSPS while employed by Tata Steel UK Ltd ("Tata Steel"). The BSPS was a defined benefits ("DB") pension scheme that provided a guaranteed lifetime income to members.

In March 2016, Tata Steel 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 safeguarded 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 DB pension schemes when their employer becomes insolvent. Tata Steel closed the BSPS to further benefit accrual from 31 March 2017. By that point, Mr M had built up 26 years and 8 months' pensionable service in the BSPS between 2 July 1990 and 31 March 2017. His annual scheme pension at the date of leaving the scheme was £12,538.62. This would be revalued over the term to retirement by a prescribed amount.

In May 2017, the PPF announced that the terms of a Regulated Apportionment Arrangement had been agreed. This was approved by The Pensions Regulator in August 2017 – under the announced plans, Tata Steel agreed to set up and sponsor a new DB pension scheme, the BSPS2, subject to certain conditions relating to funding and size being satisfied. Members were told that if the re-structure was approved, they would have three options regarding their safeguarded benefits:

1. Transfer to the PPF;
2. Transfer to the BSPS2; or
3. Transfer to an alternative pension plan such as a PPP (the BSPS offered Mr M a transfer value of £301,874.77)

Around January 2018, Mr M was introduced to Acumen. At that time his circumstances were as follows:

- He was aged 58 and divorced. He was generally in good health but had a previous heart condition around 2014. He had two adult children, neither of whom were financially dependent on him;

- He was employed full-time by Tata Steel and paid gross annual income of about £31,000. He didn't expect his employment status to change in the foreseeable future, although he wanted to retire around age 60 if possible;

- His assets comprised about £3,000 in cash held on deposit. He didn't have any other savings or investments. He lived in rented accommodation;

- He didn't have any debt or liabilities;

- After paying for rent, bills and essentials, he had surplus disposable income of about £850 available every month;

- In addition to the value of his safeguarded benefits in the BSPS, he had been a member of Tata Steel's defined contribution ("DC") workplace pension scheme since April 2017. He was also on course to receive the full state pension (from age 66); and

- Through his employment he had a lump sum death in service benefit based on a multiple of his salary.

Acumen recorded Mr M's retirement objectives in connection with his safeguarded benefits in the BSPS as follows:

> *"Your stated objectives are: -*
>
> 1. *To retire in the next 3 years or so preferably by age 60.*
> 2. *You do not need the higher level of income projected from the British Steel Pension Scheme (£12,538.62 pa indexed to date which is projected to be £14,910.82 at age 65).*
> 3. *You are keen to provide a legacy for your children.*
> 4. *You wish to take the maximum tax free cash sum to assist with a house purchase. The scheme will provide a lump sum but it will be smaller than the 25% you can access via your new pension arrangement.*
> 5. *You were concerned about your health as you had some heart issues around 4 years ago and you wanted to transfer to have the total control and to ensure the pension monies remaining would go to your children and not the trustees of the scheme.*
> 6. *The main scheme only provides a guaranteed pension for minimum of 5 years. If something was to happen in year 7 then the pension would cease and no further monies would be available to your children."*

On 19 January 2018, Acumen issued its suitability report to Mr M in which it recommended that he accept the transfer value of £301,874.77 and invest it in a new PPP in favour of the alternative PPF and BSPS2 options to achieve his retirement objectives.

<u>This complaint</u>

In March 2022, the Representative, on behalf of Mr M, complained to Acumen about the suitability of the pension transfer advice it had given him in January 2018. Acumen didn't uphold this complaint so the matter was referred to this service.

One of our investigators considered this complaint and recommended that it be upheld. To put things right, our investigator recommended that Acumen carry out a redress calculation in line with the FCA's guidelines set out in FG17/9 on the basis that Mr M transferred to the BSPS2, retired at age 65 and would be a 20% income taxpayer in retirement. In addition, he recommended that Acumen pay Mr M £200 compensation for the trouble and upset caused by its advice.

The Representative, on behalf of Mr M, accepted our investigator's assessment. Acumen didn't accept our investigator's assessment and provided additional comments explaining why. It requested that this complaint be referred to an ombudsman for a final decision. But it also stated that while it didn't agree this complaint should be upheld, it was prepared to carry out a redress calculation, in line with the basis recommended by our investigator, to bring this matter to a close.

While this complaint was in the queue awaiting allocation to an ombudsman, Acumen carried out a loss assessment in line with FG17/9. It said that this showed Mr M hadn't suffered a financial loss as at 13 December 2022. And so it didn't believe any redress was due to him, although it agreed to pay him the £200 trouble and upset payment, as recommended by our investigator.

The Representative, on behalf of Mr M, didn't accept Acumen's 'no loss' outcome or the £200 trouble and upset payment. He requested that this complaint remain in the queue for an ombudsman to review.

In October 2023, Acumen contacted this service again to state that it wanted to be proactive in bringing this matter to a close – and that it was therefore prepared to carry out a further redress calculation but instead using the FCA's BSPS-specific redress calculator (which the regulator had designed as part of its BSPS consumer redress scheme). Since making that offer, it appears that no meaningful progress has been made and that this complaint remains unresolved. It has now been allocated to me to review and decide. This is the last stage of our process.

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.

In deciding what's fair and reasonable, I take 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. Where the evidence is unclear, or there are conflicts, I've made my decision based on the balance of probabilities. In other words I've looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

In response to our investigator's assessment, Acumen stated that while it didn't agree this complaint should be upheld, it was prepared to carry out a redress calculation. In its most recent correspondence, it offered to carry out a loss assessment and settle any redress due based on the FCA's BSPS-specific redress calculator – but it appears that this hasn't happened yet. In the interests of avoiding any further delays, I think it's reasonable to proceed and issue my final decision now.

Since Acumen is prepared to resolve this complaint by carrying out a loss assessment and settle any redress due using the FCA's BSPS-specific redress calculator, I don't see the need to address the suitability of its pension transfer advice to Mr M in detail. However, I would like to state I agree with the investigator's view that the pension transfer advice Acumen gave to Mr M was unsuitable for largely the same reasons. In particular, I'm mindful of the FCA's guidance in COBS 19.1.6G that a firm should only consider a transfer to be suitable if it can clearly demonstrate, on the contemporary evidence, it's in the client's best interests. I don't think that was the case for Mr M for the following reasons:

- The primary purpose of a pension is to meet the income needs of an individual during retirement. Mr M's safeguarded benefits, accounting for 26 years and 8 months' pensionable service, represented his most valuable asset. He didn't have any other assets that could be used to support his retirement income needs. Given the lack of other assets, Acumen ought to have recognised that Mr M was likely to be heavily reliant on the value of his safeguarded benefits to generate a minimum level of core income to support his standard of living in retirement until state pension age. In my view, Mr M had no capacity for loss. He was on the cusp of planned retirement and so couldn't replenish any losses through employed income. So I think it was important not to expose the value of his safeguarded benefits to unnecessary risk by treating flexibility, control and maximisation of death benefits as a high priority at the expense of the primary income purpose – unless there was a clearly suitable reason to do so;

- Mr M was aged 58 when Acumen advised him. The basis of the advice was to enable him to retire at around age 60. It was recorded that from age 60 he needed annual income of around £14,400. And that he also wanted a tax tax-free cash lump sum of around £80,000 to buy a house. Acumen's cashflow modelling is based on Mr M drawing his state pension from age 67. But, based on his age, he's entitled to take his state pension from age 66. Therefore the basis of Acumen's cashflow modelling and recommendation is flawed;

- Furthermore, it's unclear to me how the target annual income need of £14,400 was established. It appears that Mr M simply provided a notional figure based on his own rough estimate. In my view, the starting point should've been for Acumen to establish a realistic target income based on Mr M's likely fixed outgoings, discretionary spending plans and excess income for saving. This information would then reveal the core income required to cover the expected expenditure from the target retirement age – and this would then provide a basis for the recommendation. But in Mr M's case, I cannot see that Acumen did this. Rather, it appears to have used a notional figure without seeking to scrutinise or understand what this was based on to determine if it was realistic. I don't think this approach was appropriate because without understanding Mr M's retirement income need it's difficult to conclude that the pension transfer at that time was clearly demonstrated to be in his best interests;

- As for Mr M's objective to use his tax-free cash lump sum of £80,000 to buy a property, I cannot see that any analysis was undertaken to show whether this would be sufficient to enable him to purchase a property at age 60 and, if not, how he would be able to afford the additional costs associated with purchasing a property, including fees and potential additional borrowing at his proposed retirement age;

- In summary, it's my view that Acumen failed to obtain the necessary information relating to Mr M's financial situation including his anticipated income and expenditure during retirement when assessing whether it was suitable for him to transfer out of the BSPS to achieve his early retirement objective. It may well have been the case that Mr M's retirement income need could've been met by the alternative, lower risk option of the BSPS2 but Acumen failed to establish this;

- Acumen recorded that Mr M had a *'medium'* risk profile. At that time he had cash savings of about £3,000 and lived in rented accommodation. Save for the small DC workplace pension he had, he didn't have any savings or investments that indicated he had experience of investing. And the risk profile questionnaire recorded that he had no experience of investing too. I'm not convinced he was correctly categorised a *'medium'* risk investor. I haven't seen any evidence that persuades me Mr M understood the investment, inflation and longevity risks associated with his safeguarded benefits being transferred from the BSPS to a PPP. Those risks would've been retained by the BSPS2 had he been advised to transfer to that scheme – I cannot see that there was any compelling reason for Mr M to take on those risks at that time;

- Acumen recorded that Mr M preferred flexible income rather than guaranteed lifetime income. It's unclear why Mr M apparently didn't value guaranteed income. He had received guaranteed income all his working life. So I think a guaranteed retirement income from another source such as the BSPS2 before receiving his state pension at age 66 would've been valuable for an individual in his circumstances;

- Flexibility and control might sound attractive, but I can't see that Mr M had any concrete need for it. I'm not persuaded that it was appropriate for an inexperienced investor to relinquish the guarantees attached to his main retirement provision in exchange for more risk so that he could access flexible benefits. There's no real evidence that Mr M required the flexibility of irregular lump sums or variable income during retirement. But if he did require it, then any flexible needs could've been met by the tax-free cash under the BSPS2 and his DC workplace pension scheme. This doesn't appear to have been adequately considered by Acumen;

- Mr M had surplus disposable income of about £850 available every month. There's inadequate evidence that Acumen considered saving some of these additional monies in either a pension, investment or savings account to provide flexible income or lump sums rather than transferring and losing benefit guarantees;

- Acumen recorded that Mr M was concerned about the security of his safeguarded benefits and wanted control over his pension. But he appears to have been a largely passive pension saver up until that point. There's no evidence he had experience of controlling, managing or investing large sums of money;

- The suitability report mentioned that Mr M wanted to ensure any unused pension benefits be inherited by his adult children. While I understand that death benefits are important to consumers, the priority here, in my opinion, was to advise Mr M about what was best for his own retirement provision. Withdrawing money from the PPP to meet income and lump sum needs at the planned retirement age of 60 would likely mean that the size of the fund remaining in later years – when death is more likely – could be much smaller than expected. I can't see that this was explained to Mr M. In any event, through his employment he had a generous lump sum death in service benefit which was applicable until he left employment. In addition, the value of his DC workplace pension plan would be payable as a tax-free lump sum to any nominated beneficiaries;

- Mr M was generally in good health but had a previous heart condition around 2014. It's my view that Mr M had no serious health issues at the time Acumen advised him in 2018 which might reasonably have prompted him to relinquish the guarantees attached to his own retirement income for the sake of an enhanced safety net for his adult children who weren't financially dependent on him. So I'm not convinced there was any real merit in him transferring to a PPP at that time to provide a lump sum death benefit at the cost of losing valuable benefit guarantees;

- The TVAS calculation showed that the critical yield figure to match the benefits under the BSPS at age 65 was 13.7% on the basis Mr M took pension income only. This compared with a discount rate of 3.3% at age 65, as explained by our investigator in his assessment. For further comparison, the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2% per year. It's my view that a required investment growth rate of 13.7% was incompatible with the discount rate, Mr M's *'medium'* risk profile and the recommended investment portfolio which had a high projected growth rate of 5.37%. I think these factors showed that it was very likely Mr M would be financially worse off as a result of the pension transfer;

- Notwithstanding the above, the basis of the recommendation was that Mr M was seeking to take benefits at around age 60. If that was the case then I would've expected Acumen to also calculate the critical yield figure at age 60 to enable Mr M to make an informed decision. But it didn't. I think this was a material oversight because the critical yield figure at age 60 would've likely been greater than 13.7% due to the shorter investment timeframe and impact of the initial advice charge on the required growth rate. This meant that Mr M wasn't provided accurate information about the level of investment growth required in the PPP to match the scheme pension if he took benefits early at age 60;

- In my view, the suitability report failed to provide sufficient information on the alternative options to achieve Mr M's stated objectives. I think these inadequacies in the suitability report led to Mr M making an uninformed decision to proceed with a pension transfer when this was not in his best interests.

Conclusion

There's no evidence that the stated objectives were properly explored, scrutinised and challenged by Acumen to ensure they were appropriate and achievable. Overall, I don't think the contemporaneous evidence supports the position as to why Mr M's objectives would've been sufficiently compelling reasons for him to relinquish valuable benefit guarantees by transferring to a PPP at that time, especially in view of his age, general good state of health and level of reliance on these monies to provide retirement income. Based on what I've seen, I think Acumen failed to give adequate consideration to the risk that Mr M couldn't financially bear the risks involved in the pension transfer.

I haven't seen any evidence that shows the pension transfer to the PPP led to Mr M gaining any clearly defined advantage compared to the alternative option of transferring to the BSPS2 at that time. As a result, I think it's fair and reasonable to uphold this complaint.

Putting things right

The aim is to put Mr M in the financial position he would've been in had he been given a suitable recommendation.

Properly advised, I think Mr M would've transferred to the BSPS2 and his benefits would now be preserved in that scheme. I acknowledge that it was recorded he wanted to retire at around age 60. However, I think it was sufficiently unclear when he would be able to retire, especially given his level of reliance on his BSPS benefits. I think it's fair to say that plans about retirement can change. I'm not persuaded that there's sufficient contemporaneous evidence that supports the position Mr M would've started taking his safeguarded benefits which involved taking a regular income at age 60. And I'm not convinced it could be reasonably determined at the time that the PPF was the likely better option for Mr M. And so I think, given his age and the lack of clarity surrounding when he would retire, the BSPS2 was likely the better option for him based on what was known at the time and that at age 65 the BSPS2 would provide a higher level of benefits than the PPF. As such, the calculation on the basis of entering the BSPS2 should be carried out. For clarity, compensation should be based on the BSPS2's normal retirement age of 65 for the reasons explained.

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 the Representative, on behalf of Mr M, and our service upon completion of the calculation.

The 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 M's acceptance of this 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 M redress as a cash lump sum payment,
- explain to Mr M before starting the redress calculation that:
    - its 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 his PPP
- offer to calculate how much of any redress Mr M receives could be augmented rather than receiving it all as a cash lump sum;
- if Mr M accepts Acumen's offer to calculate how much of his redress could be augmented, request the necessary information and not charge him 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 M's end of year tax position.

Redress paid to Mr M 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've been taken as tax-free cash and 75% would've been taxed according to Mr M'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.

In addition, regardless of the outcome of the loss assessment, Acumen should pay Mr M £200 compensation for the trouble and upset caused by its advice, as recommended by our investigator.

My final decision

I uphold this complaint and require Acumen Independent Financial Planning Limited to pay Mr M the compensation amount as set out in the steps above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr M to accept or reject my decision before 26 February 2024.
Clint Penfold
Ombudsman