

## **The complaint**

Mr H complains about the advice given by Acumen Independent Financial Planning Limited (Acumen) to transfer the benefits from his defined-benefit ('DB') occupational pension to a self-invested personal pension ('SIPP'). He says the advice was unsuitable for him and flawed. He thinks this has caused a significant 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 H's employer would be set up – the BSPS2.

In October 2017, members of BSPS were 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 (and was later extended to 22 December 2017).

Mr H approached Acumen in November 2017 to discuss his pension and retirement needs. I understand he was also concerned about the situation with the BSPS and his employer.

Acumen completed a fact-find to gather information about Mr H's circumstances and objectives.

- Mr H was 26 and he was living with his partner, they had a young dependent child.
- He was employed by Tata Steel on a basic wage of £30,000 a year but had recently earned more than this due to working overtime.
- He owned his home outright and it had a value of around £82,000.
- He had no savings or investments,
- He had a loan of about £14,000 which had a monthly repayment of £264, and some modest other credit.

Acumen also carried out an assessment of Mr H's attitude to risk, which it said was 'high medium or six on a scale of one to ten'. It also said that he had a low capacity for risk.

In respect of Mr H's pension arrangements:

He had received a cash equivalent transfer value ('CETV') from the BPS in September 2017. This showed that he had over seven years service and was entitled to a pension of £3,421.93 at his date of leaving in March 2017. The transfer value was £69,465.83.

He was a member of the new employers Defined Contribution ('DC') scheme. He was contributing 6% of his salary into this and his employer was contributing 10%.

On 19 December 2017, Acumen advised Mr H to transfer his pension benefits into a SIPP and invest in funds that Acumen said matched his attitude to risk. The suitability report said that the growth rates required to match the DB scheme – the critical yields – may not be achievable, and he may receive a lesser amount by transferring. But Mr H's need for flexibility, and the substantially improved death benefits outweighed this. So, the transfer met his objectives.

Mr H also transferred the DC scheme value at the same time. He held £2,822.42 in the DC scheme and this was also placed in the SIPP. Mr H remained a member of the DC scheme and contributions were made into it going forward. As far as I can see Acumen didn't document this part of the transfer although it clearly went ahead due to the contact Mr H had with Acumen.

Mr H complained in 2022 to Acumen about the transfer advice because he thought it was unsuitable. And the advice didn't properly take into account his circumstances.

Acumen didn't uphold Mr H's complaint. It concluded that the advice was suitable for him and was in his best interests. It thought that the transfer met his needs for flexibility.

Mr H referred his complaint to the Financial Ombudsman Service. An investigator upheld the complaint and recommended that Acumen pay compensation. He thought that the advice wasn't suitable for Mr H as he was likely to receive lower retirement benefits due to it. He didn't think any greater flexibility, or death benefits, that the SIPP might provide outweighed this. He also didn't think there was a good reason to transfer the DC scheme.

Acumen disagreed, saying that Mr H could not go into the BPS2 as it was not established and he didn't want to go into the PPF. He didn't trust his employer. So, a transfer was the only option that met his needs.

Mr H's representative questioned the tax treatment in the compensation and the assumed retirement age used in this.

The Investigator wasn't persuaded to change his opinion, so the complaint was referred to me to make 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.

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.

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.

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 H's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

### *Financial viability*

Acumen carried out a transfer value analysis report (as required by the regulator) showing how much Mr H's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield).

However, this was based on his existing scheme benefits and Mr H didn't have the option to remain in the BSPS – he either needed to opt into the BSPS2 or move with the scheme to the PPF.

Acumen has said the BSPS2 may not have gone ahead so the only comparison it could provide was with the benefits available to Mr H through the PPF. But I think Acumen overestimated the chance of this not happening; Mr H had received his 'Time To Choose' pack by the time the advice was given. And details of the scheme had been provided; the BSPS2 would've offered the same income benefits but the annual increases would've been lower. Of course, it's possible this may not have gone ahead, but I still think the benefits available to Mr H through the BSPS2 should've been factored in with this advice so that Mr H was able to make an informed decision.

As I've outlined above, Acumen was clear in that the transfer wasn't feasible in respect of replacing the pension benefits he was giving up. I agree with this, and I've explained why below.

The advice was given after the regulator gave instructions in Final Guidance FG17/9 as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published by the Financial Ombudsman Service on our website. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers,

they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor.

Mr H was 26 at the time of the advice and wanted to retire between his ages 60 and 65. The critical yield required to match Mr H's benefits at age 65 was 7.2% - I'm assuming this was on the basis he was taking a full pension although this isn't made clear. And at age 60 this was 7.6%. The critical yield to match the benefits available through the PPF at age 65 was quoted as 5.7% per year.

As I've said above, Mr H remaining in his existing DB scheme wasn't an option. So, the critical yields applicable to the BSPS2 benefits should also have been provided by Acumen. The lower annual increases under the BSPS2 would've likely decreased the critical yields somewhat compared to the BSPS but, I still think they would've likely been higher than those reflecting the PPF benefits, particularly at age 65. So, if Mr H were to opt into the BSPS2 and take the same benefits at age 65 the critical yield would've been somewhere between those figures, and likely closer to 7%.

The relevant discount rate closest to when the advice was given which I can refer to was published by the Financial Ombudsman Service for the period before 1 October 2017, and was 4.7% per year to Mr H's ages 60 and 65. I've kept in mind that the regulator's projection rates had also remained unchanged since 2014: the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.

I've taken this into account, along with the composition of assets in the discount rate, Mr H's 'high medium' attitude to risk and also the term to retirement. There would be little point in Mr H giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme. But here, given the lowest critical yield was nearly 6%, I think Mr H was likely to receive benefits of a substantially lower overall value than the DB scheme at retirement, as a result of investing in line with that attitude to risk. This would be the case even if the scheme moved to the PPF.

For this reason alone, a transfer out of the DB scheme wasn't in Mr H's best interests. Of course, financial viability isn't the only consideration when giving transfer advice. And Acumen has said the main driver in this transfer was Mr H's need for flexibility. I've considered this below.

### *Flexibility and income needs*

It seems the main reason that Acumen recommended this transfer was for the flexibility and control it offered Mr H. Having considered the evidence, I don't think Mr H needed to transfer his DB scheme to a personal pension in order to have flexibility in retirement. To my mind this seems more of a 'nice to have' rather than a genuine objective.

It's evident that Mr H could not take his DB scheme benefits flexibly. Although he could choose to take tax-free cash and a reduced annual pension, Mr H had to take those benefits at the same time. But I'm not persuaded that Mr H had any concrete need to take tax-free cash and defer taking his income, or to vary his income throughout retirement.

Acumen didn't establish, with any degree of accuracy, what Mr H's income needs in retirement would be. And I don't think this is entirely unreasonable given that Mr H's retirement was so far in the future. But, of course, this means that it also difficult to advise Mr H on his retirement as it didn't really know what he needed.

But Mr H had a DB scheme which would have provided a guaranteed and increasing income of around £8,900. He would also be likely to have a state pension sometime on or after his

age 67 (now 68) which would also be around £8,500. It's unlikely, given that Mr H's DB scheme benefits were relatively modest, that these two alone would have met all of his retirement income needs. But they could have formed a core guaranteed income for Mr H which it was reasonable to assume that he would need. And, given that membership of DB schemes offering guaranteed and safeguarded benefits are fairly uncommon these days, these were likely to be how two only guaranteed sources of income. Any other pension Mr H contributed to was likely to be subject to the volatilities of the investment markets.

Mr H essentially 'gave this up' on the basis that the funds could be placed in a SIPP. This would give him a pot of money that he could withdraw from as and when he wanted or needed to. And Acumen felt this would have better met his needs. I've thought about whether he really needed to do this to gain flexibility.

Mr H was a member of his employers new DC scheme. 16% of his salary was being placed into this and he had a very long time to build up a fund of money. And even if Mr H changed employers, it would be a reasonable assumption that any future benefits he would accrue would be based on a similar arrangement. So, the most likely scenario here would be that Mr H would have a fund that would give him the flexibility that Acumen said he wanted.

Given Mr H's situation at the time of advice, it was a reasonable assumption that he would build up the benefits and have flexible access to those that the transfer would have given him in any event. So, I don't think it was in his best interest to give up his DB scheme benefits for this reason. Particularly as this was likely to lead to him receiving much lower retirement benefits, as Acumen said.

I accept at the time of the advice, the BSPS2 hadn't been established. Although I think the communications sent out by the scheme trustees were very optimistic that the scheme operating conditions would be met, it wasn't certain. And if Mr H had opted into the BSPS2 and it hadn't gone ahead, he would've moved with the scheme to the PPF. At age 65 Mr H would've been entitled to a pension of £6,666 per year from the PPF. This was lower than the pension he'd be entitled to under the BSPS2, but I don't think it was so substantially lower such that it should've made a difference to the recommendation. As I've said above, Mr H would've had his DC scheme to draw on until his state pension became payable. So, I still think Mr H could've met his needs in retirement even if the BSPS2 hadn't gone ahead and he'd had to move with it to the PPF.

Essentially, Mr H was only 26 at the time of the advice, and based on what I've seen he didn't have concrete retirement plans. As Mr H had around 35 years before it was likely he would think about accessing his pension, I think it was too soon to make any kind of decision about transferring out of the DB scheme. So, I don't think it was a suitable recommendation for Mr H to give up his guaranteed benefits now when he didn't know what his needs in retirement would be. If Mr H had opted into the BSPS2 and later had reason to transfer out he could have done so closer to retirement.

I don't think the advice to transfer for this reason was in Mr H's best interests.

### *Death benefits*

Another of the reasons the transfer was recommended was because Mr H was attracted to the lump sum death benefits that a personal pension could offer. The advice was given on the basis that these were greater than the DB scheme benefits.

Death benefits are an emotive subject and of course when asked, most people would like their loved ones to be taken care of when they die. The lump sum death benefits on offer through a personal pension were likely an attractive feature to Mr H. I understand he wasn't

married but the suitability letter does refer to his partner also being able to benefit from the DB scheme benefits. And he may have married in the future. So, it's relevant to consider them.

I appreciate the death benefits were important to Mr H, and he might have thought it was a good idea to transfer his DB scheme to a personal pension because of this. But the priority here was to advise Mr H about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think Acumen explored to what extent Mr H was prepared to accept a lower retirement income in exchange for higher death benefits.

I also think the existing death benefits attached to the DB scheme were underplayed. Mr H had a partner and a young child and so the dependent's pension provided by the DB scheme would've been useful to his dependents if Mr H predeceased them. I don't think Acumen made the value of this benefit clear enough to Mr H. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. In any event, Acumen should not have encouraged Mr H to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

Furthermore, if Mr H genuinely wanted to leave a legacy for his partner and child, which didn't depend on investment returns or how much of his pension fund remained on his death, I think Acumen should've instead explored life insurance.

Overall, I don't think the different death benefits available through a transfer to a SIPP justified the likely decrease of retirement benefits for Mr H. And I don't think that insurance was properly explored as an alternative.

#### *Control or concerns over financial stability of the DB scheme*

It's clear that Mr H, like many employees of his company, was concerned about his pension. His employer had recently made the announcement about its plans for the scheme and the point of sale documentation shows that he had some concerns about the PPF. There was some negative commentary at the time about the PPF and he said he preferred to have control over his pension fund.

So, it's quite possible that Mr H was also leaning towards the decision to transfer because of the concerns he had about his employer and his negative perception of the PPF. However, it was Acumen's obligation to give Mr H an objective picture and recommend what was in his best interests.

As I've explained, by this point details of the BSPS2 were known and it seemed likely it was going ahead. So, the advice should've properly taken the benefits available to Mr H through the BSPS2 into account and I think this should've alleviated Mr H's concerns about the scheme moving to the PPF.

But even if there was a chance the BSPS2 wouldn't go ahead, I think that Acumen should've reassured Mr H that the scheme moving to the PPF wasn't as concerning as he thought. The income available to Mr H through the PPF would've still provided a significant portion of the income he thought he needed at retirement, and he was unlikely to be able to exceed this by transferring out. And although the increases in payment in the PPF were lower, the income was still guaranteed and was not subject to any investment risk. So, I don't think that these concerns should've led to Acumen recommending Mr H transfer out of the DB scheme altogether.

It seems to me that Mr H's stated desire for 'control' related more to moving his pension away from an employer that he didn't trust than to any resolution on his part to begin to manage his investment.

But it ought to have been explained that Mr H's employer and the trustees of the BSPS2 were not the same. And in any event, Mr H was not intending to leave his employment and his DC pension remained connected to his employer – so transferring out of the scheme didn't achieve a 'break' from his employer. So had Acumen explained that Mr H's belief regarding the control Mr H's employer had over his pension was misplaced, I think he would have been reassured by this.

### *Suitability of investments*

Acumen recommended that Mr H invest in a range of funds that it said matched his attitude to risk. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr H, it follows that I don't need to consider the suitability of the investment recommendation. This is because Mr H should have been advised to remain in the DB scheme and so the investments in these funds wouldn't have arisen if suitable advice had been given.

### *Summary*

I don't doubt that the flexibility, control and potential for higher death benefits on offer through a personal pension would have sounded like attractive features to Mr H. But Acumen wasn't there to just transact what Mr H might have thought he wanted. The adviser's role was to really understand what Mr H needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr H was suitable. He was giving up a guaranteed, risk-free and increasing income within the BSPS2 (or the PPF). By transferring to a SIPP Mr H was, in my view, likely to obtain lower retirement benefits at age 65. And I don't think there were any other particular reasons which would justify the transfer and outweigh this. So, I don't think it was in Mr H's best interests for him to transfer his DB scheme to a SIPP now when he had the opportunity of opting into the BSPS2.

I appreciate that the BSPS2 hadn't been confirmed when the advice was given, but I think it was clear to all parties that it was likely to be going ahead. Mr H had around 35 years before he expected to retire, and he didn't know what his needs in retirement would likely be. So, I don't think that it would've been in his interest to accept the reduction in benefits he would've faced by the scheme entering the PPF, as it wouldn't be offset by the more favourable reduction for very early retirement. And by opting into the BSPS2, Mr H would've retained the ability to transfer out of the scheme nearer to his retirement age if he needed to. And the spouse's pension would be set at 50% of his pension at the date of death, and this would be calculated as if no lump sum was taken at retirement (if Mr H chose to do so). The annual indexation of his pension when in payment was also more advantageous under the BSPS2. So, I think Acumen should've advised Mr H to opt into the BSPS2.

Acumen says that regardless of the advice given, Mr H made an informed choice to proceed with the transfer. And it believes Mr H would've transferred in any event.

I accept that Acumen disclosed the risks of transferring to Mr H, and provided him with a significant amount of information in the suitability report. But ultimately it advised Mr H to transfer out, and I think Mr H relied on that advice.

I'm not persuaded that Mr H would've insisted on transferring out of the DB scheme, against Acumen's advice. I say this because Mr H was an inexperienced investor and this pension accounted for all of his retirement provision so far. So, if Acumen had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think he would've accepted that advice.

I'm not persuaded that Mr H's fear about the PPF was so great that he would've insisted on the transfer knowing that a professional adviser, whose expertise he had sought out and was paying for, didn't think it was suitable for him or in his best interests. And if Acumen had explained Mr H was unlikely to exceed the benefits available to him through the PPF if he transferred out, and that he could meet his income needs in retirement without risking his guaranteed pension, I think that would've carried significant weight.

I'm aware that in some communications with Acumen Mr H appeared motivated to get the transfer out completed. But Mr H had received advice from Acumen that he should transfer out of the DB scheme. So, I think his words have to be considered in that context. It isn't reasonable to assume that he'd have behaved the same way if he'd been advised to opt into the BSPS2. So, I don't think this demonstrates he'd have gone against the advice.

In light of the above, I think Acumen should compensate Mr H for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

#### *The transfer of the current value of Mr H's DC scheme benefits*

As I've outlined above the value of Mr H's DC pension was also transferred at the same time as his BPS benefits.

As far as I can see Acumen didn't document the reasons why it did this. It seemed to just form part of the process that took place when Mr H transferred his DB scheme benefits. Clearly this isn't right, whilst the DC scheme had a modest value Acumen should have documented this advice fully and provide a rationale why it was suitable for Mr H. And in the absence of this, and any obvious reasons from Mr H's circumstances, I don't think this transfer was suitable for him. Acumen should have advised Mr H to leave the benefits in the DC scheme. And I'm satisfied that this is what he would have done if Acumen had properly advised him about this.

Lastly, our Investigator recommended that Acumen also pay Mr H £300 for the distress caused by the unsuitable advice. I don't doubt that Mr H has been caused distress and concern in relation to his retirement planning. And he said that the loss of his guaranteed pension benefits, and the uncertainty he now faces, has caused him significant stress and anxiety. 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**

My aim in awarding redress is to put Mr H as far as possible in the position he would be in now if Acumen had given him suitable advice. I think Mr H would have remained in the DB scheme. I also think he would not have transferred the current value of his existing DC arrangements to the new scheme.

#### *What should Acumen do?*

To compensate Mr H fairly, Acumen must determine the **combined fair value** of his transferred pension benefits as outlined in Step One and Step Two below. If the **actual value** is greater than the **combined fair value**, no compensation is payable.



### **actual value**

This means the actual amount payable from the SIPP at the date of the calculation.

### **fair value – step one**

A fair and reasonable outcome would be for the business to put Mr H, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr H would most likely have remained in the occupational pension scheme and opted to join the BSPS2 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. If Acumen does not yet have access to the calculator it should contact the supervision department of the FCA to seek access to it as soon as possible. A copy of the BSPS calculator output should be sent to Mr H 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 H 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.

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 H's acceptance of my decision.

### **fair value – step two**

Acumen must use the benchmark shown below to determine the fair value of Mr H's DC scheme if suitable advice had been given.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Value of the SIPP	Still exists and liquid	Notional value of original pension plans to be obtained from the DC scheme Mr H transferred from.	Date of transfer	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 90 days of the business receiving the complainant's acceptance)

Any additional sums paid into the SIPP should be added to the fair value calculation from the point in time when they were actually paid in. Any withdrawal, income or other payment out

of the SIPP should be deducted from the fair value at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there are a large number of regular payments, to keep calculations simpler, I will accept if Acumen totals all those payments and deducts that figure at the end instead of deducting periodically.

The combined value of the sums produced by the above two steps is the **combined fair value**.

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

Redress paid to Mr H 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 Mr Hs 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 H'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.

I've thought about Mr H's representative's point regarding the 15% deduction from any redress payable, to take into account the tax Mr H would've paid had this been taken as income. It believes this is unfair as it doesn't account for the charges that would've been deducted from the fund value over that time. While I appreciate the representative feels this may unfairly reduce the redress payable, I'm mindful that it is not possible to provide exact compensation in these circumstances, as the only way to achieve this would be to put Mr H back into the scheme as if the transfer out hadn't happened. So, overall, I remain of the view that the redress proposed fairly compensates Mr H for the impact of the unsuitable advice he received.

The payment resulting from all the steps above is the 'compensation amount'.

In the event that it isn't possible to obtain any notional value from the provider(s) involved Acumen should compare Mr H current fund value with the FTSE UK Private Investors Income Total Return Index.

This is a suitable method of compensation for the DC part of the transfer because:

- Mr H wanted Capital growth and was willing to accept some investment risk.

- The FTSE UK Private Investors Income *Total Return* index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.
- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr H's circumstances and risk attitude.

Acumen should also pay Mr H £300 for the distress the poor advice caused him.

Where I uphold a complaint, I can award fair compensation of up to £160,000, 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 £160,000, 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 H the compensation amount as set out in the steps above, up to a maximum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Acumen Independent Financial Planning Limited pays Mr H the balance.

If Mr H 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 H can accept my decision and go to court to ask for the balance. Mr H 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 H to accept or reject my decision before 9 November 2023.

Andy Burlinson  
**Ombudsman**