

## **The complaint**

Mr G complains about the advice given by Niche Independent Financial Advisers Limited ('Niche') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a self-invested personal pension ('SIPP'). He says the advice was unsuitable for him and believes this has caused a financial loss.

## **What happened**

In March 2016, Mr G's employer announced that it would be examining options to restructure its business, including decoupling the employer's DB scheme (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.

Mr G was concerned about what the announcement by his employer meant for the security of his preserved benefits in the BSPS. He wasn't sure what to do and so, based on what he'd heard from colleagues, he got in touch with Niche. Mr G met with Niche in August 2017 and it gathered information about his circumstances and objectives. It noted Mr G was aged 45 and married with children. That Mr G and his wife lived in rented housing and had a loan of £4,000 due to be repaid in two years. And that Mr G had no savings and no disposable income. It was recorded that Mr G had a 'balanced' attitude to risk; that he wanted to retire early and have an income of £17,000 per year. It was further noted he and his employer were contributing 16% of his salary per month to his employer's new defined-contribution ('DC') pension scheme, equivalent to around £5,000 per year.

In September 2017 Niche advised Mr G to transfer his BSPS benefits to a SIPP. It said this would allow Mr G to achieve his objectives of control and flexibility of income, having the option to retire and drawdown income at age 55, and better death benefits for his wife and children. Mr G accepted this advice and £176,175.90 was transferred from the BSPS to his new personal pension.

In October 2017, members of the 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 the BSPS2 or transfer their BSPS benefits elsewhere. The deadline to make their choice was 11 December 2017 (and was later extended to 22 December 2017). However, Mr G continued with the recommendation to transfer out of the BSPS.

In 2021 Mr G complained to Niche about the advice. He thought Niche's recommendation that he transfer out of the BSPS was unsuitable and had caused him a financial loss. In its response to Mr G's complaint, Niche said it had acknowledged Mr G was unlikely to match the pension available to him under the BSPS. But as he had other objectives, such as accessing the pension flexibly from age 55 and being able to pass on the full pension to his wife and children in the event of his death, the transfer was suitable.

Unhappy with Niche's response, Mr G referred his complaint to our Service to investigate.

One of our Investigators looked into the complaint and said it should be upheld. He thought the advice was unsuitable and recommended Mr G should be compensated based on him having opted to move with the scheme to the PPF because he wanted to retire early.

Niche didn't agree – it maintained the advice was suitable as the transfer met Mr G's objectives. Specifically, it didn't think Mr G could've met his needs if he retired early under the PPF as the income he'd receive wasn't sufficient, whereas it had demonstrated through cash flow planning that Mr G could meet his needs by accessing the funds through a SIPP until his state pension became payable.

Mr G didn't agree with the Investigator's proposed redress – he said retiring early was something he wanted to consider but it wasn't a concrete plan. Mr G said he would've opted to join the BPS2 instead.

As the complaint couldn't be resolved informally, it's come to me for a final decision. After reviewing the case, I got in touch with both parties to explain that I was intending to uphold the complaint but I was minded to direct Niche to pay compensation based on the benefits available to Mr G through the BPS2 rather than the PPF. I didn't receive a response from either party within the deadline I gave, so I'm now providing my 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.

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 Business ('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 Niche'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.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6 that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, Niche should

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

### *Financial viability*

Niche carried out a transfer value analysis report ('TVAS'), as required by the regulator, showing how much Mr G'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 G didn't have the option to remain in the BPS – he either needed to opt into the BPS2 or move with the scheme to the PPF.

Whilst the full details of what the BPS2 would entail weren't known when the advice was given in September 2017, the restructuring of the BPS had been ongoing for a significant amount of time by the time Mr G took advice. And the details of the scheme were likely to be announced imminently. But I can't see that Niche cautioned Mr G about transferring ahead of knowing what he'd be entitled to under the BPS2. The suitability report said that for the vast majority of members it would be more beneficial for them to join the BPS2. However, Niche noted that because of the lower increases to the accrued pension in deferment and in payment under the BPS2, Mr G saw the new scheme as far less appealing. But I don't think it was reasonable for Niche to simply accept Mr G's view on this; its role wasn't to just transact what Mr G thought he wanted – it needed to challenge Mr G's assumptions and analyse all of his options before offering its advice. As a consequence, I don't think Mr G could make a fully informed choice about what was in his best interests when the advice was delivered.

I appreciate that Mr G's cash equivalent transfer value expired ('CETV') on 19 October 2017. So Niche may argue that it had to provide its advice to Mr G before this and he may not have received his 'time to choose' pack with the details of the BPS2 benefits by then. But I don't think the expiry of the CETV should've been a barrier to Niche providing Mr G with suitable advice, which would involve it fully considering all of his options before advising him to make an irreversible decision to transfer out of the scheme. And in any event, the suitability report refers to the trustees providing new CETVs to members following the improved funding position of the scheme. So I think it's likely Mr G would've received a new CETV, valid for another three months, which would've given Niche ample time to provide Mr G with analysis of his BPS2 benefits and provide advice taking all of his options into account.

Nevertheless, I've considered the TVAS produced by Niche. According to the fact-find, Mr G said he wanted to retire as early as possible, although he said he would work longer if he needed to. The TVAS dated 11 September 2017 set out the relevant critical yields; at age 65 it was 7.04% if Mr G took a full pension. The critical yield required to match the benefits provided through the PPF at age 65 was 4.94% if Mr G took a full pension and 4.54% if he took tax-free cash ('TFC') and a reduced pension.

Despite Mr G saying that he wanted to retire early, and Niche saying in the suitability report that it had based its advice on Mr G accessing his pension at age 55, it didn't provide the critical yield figures for retiring any earlier than age 65. I can't be certain what the critical yields would've been at age 55 or age 60. But given that the funds would be invested for less time before being accessed and would be required to pay income for longer, I think the relevant critical yields required to match the BPS and the PPF benefits at ages 55 and 60 were likely to be significantly higher than the figures I've quoted above.

Furthermore, as I've said above, Mr G remaining in his existing DB scheme wasn't an option. And had Niche waited to give its advice until the details of the BPS2 had been announced it could've provided Mr G with the critical yields applicable to the BPS2 benefits. The lower

annual increases under the BSPS2 would've likely decreased the critical yields somewhat. But I still think they would've likely been higher than those reflecting the PPF benefits, particularly at age 65.

The advice was given during the period when the Financial Ombudsman Service was publishing 'discount rates' on our website for use in loss assessments where a complaint about a past pension transfer was being upheld. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, I consider they provide a useful indication of what growth rates would have been considered reasonably achievable when the advice was given in this case.

The relevant discount rate at the time the advice was given was 4.4% a year for 19 years to retirement and 3.7% a year for 9 years to retirement. 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% a year.

I've taken this into account, along with Mr G's 'balanced' attitude to risk and also the term to retirement. Given the discount rate and the middle projection rate, if Mr G transferred out of the scheme it's possible he could've matched the benefits available to him under the PPF if he retired at age 65. But there would be little point in Mr G giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme. And in light of Mr G's wish to retire early, it's likely that the applicable critical yields would be higher than both the discount rate and the regulator's middle projection rate. So, overall, I think Mr G was likely to receive benefits of a lower overall value than the DB scheme at retirement, as a result of investing in line with that attitude to risk, particularly if he retired earlier than age 65, as per his wishes at the time.

It appears Niche accepted this. The suitability report said, *"Taking [the critical yield] into account, I would recommend that you do not to transfer this pension, as you are likely to be financially worse off in retirement."* But it went on to say, *"However, as you have advised me that you wish to use your pension in an entirely different manner, to that set out by the rules of the [BSPS], I would be happy to give you a positive recommendation to transfer this pension for the following reasons..."* These reasons were related to Mr G's other objectives as recorded in the suitability report, which I'll return to later. But overall, I think this further demonstrates that Niche was simply facilitating what Mr G thought he wanted to achieve rather than advising him on what was in his best interest, given it knew Mr G was likely to be worse off if he transferred out of the DB scheme.

I've also considered the cash flow forecasts produced by Niche, which it says shows that Mr G could meet his income needs until his state pension became payable. While I note the cash flow demonstrating the transfer of the pension shows Mr G would have funds worth over £150,000 remaining at age 100, this is based on yearly net growth that fluctuates wildly – with some year's growth as high as 36%. And it is also based on Mr G greatly reducing the income he takes from his SIPP once his state pension becomes payable. In comparison, the TVAS shows that if Mr G's funds grew in line with the regulator's middle projection rate, and he withdrew the same income he was entitled to through the DB scheme, his fund would be depleted at age 83. Furthermore, a cash flow analysis showing the impact of no real growth (taking account of charges) showed the funds would be depleted by age 80. So, if Mr G's funds performed poorly, he was at a real risk of depleting his pension before he died.

In summary, if Mr G had transferred to a SIPP he may have been able to match the benefits provided by the PPF if he retired at age 65. But given Mr G told Niche he wished to retire early, he was likely to be worse off by transferring to a SIPP. Furthermore, this was Mr G's only pension, so I don't think he really had the capacity to take much risk with these funds –

he would've been heavily dependent on this fund until his state pension became payable. So based on the above alone, the transfer wasn't in Mr G's best interest.

However, financial viability isn't the only consideration when giving transfer advice. Other objectives might mean a transfer is suitable despite providing overall lower benefits, as Niche has argued here. So, I've thought about whether Mr G's other objectives meant a transfer was still suitable for him.

### *Flexibility and income needs*

In the suitability report, Niche said that Mr G wanted to be able to retire at 55 and draw more of an income from his pension in early retirement, before reducing the amount he took as income once his state pension became payable. Niche said this wasn't possible if Mr G opted into the BPS2 or moved to the PPF, so he needed the flexibility that transferring to a SIPP would provide.

I should first say that I think Mr G's desire to retire at age 55 was purely aspirational. Mr G was only 45 at the time of the advice, and he clearly expressed to Niche that he was prepared to work for longer if he needed to and would only retire early if it was financially viable. The analysis carried out by Niche demonstrates that retiring that early wasn't financially viable for Mr G, as I've explained above. But even if I were to consider that Mr G's retirement plans were more advanced than the mere aspirations set out by Niche – and he really did want to retire early – I think Niche should have assessed the possibility of achieving this goal whilst being a member of BPS2 or the PPF. It's clear that in these circumstances there would have been an 'actuarial reduction' caused by early retirement from the scheme. This would have meant Mr G's pension benefits would have been somewhat reduced due to him accessing the pension earlier and for longer. But I've seen no evidence this was discussed with a view to assessing whether it was more in Mr G's best interest, rather than him being advised to transfer away completely.

While I don't think Mr G genuinely expected to retire at age 55, I've still considered whether it would've been possible for him to do so without transferring his benefits to a SIPP, given that Niche's advice was based on him taking benefits at age 55. And having considered the evidence, I don't think Mr G needed to transfer his DB scheme to a SIPP in order to have the flexibility to retire early and to meet his income needs.

I don't know what level of income Mr G was entitled to at age 55 through the BPS2 or the PPF because Niche failed to do that analysis. I think that's a significant failing because it meant Mr G wasn't able to make an informed choice here. But under the BPS at age 65, Mr G would've been entitled to around £12,200, so under the BPS2 his starting pension could've been reduced by up to 50% if he retired at age 55. I've therefore assumed he'd be entitled to somewhere in the region of £6,000 per year if he didn't take any TFC (£500 per month net). Niche's fact-find says Mr and Mrs G required around £1,300 per month (net) in retirement, so clearly the pension he could take from the DB scheme wouldn't meet that need. However, Mrs G was six years younger than Mr G and she told Niche she wasn't expecting to retire early. So, Mrs G's income of £600 per month (net) ought to have been taken into account. This would've put Mr and Mrs G's income at £1,100 per month (net) if Mr G retired at 55.

While this wouldn't have been enough to meet their full income need before Mr G reached state retirement age, Mr G would be building up extra retirement funds over the next ten years through his employer's DC scheme. The cash flow analysis shows Mr G and his employer were contributing around £5,300 per year to this pension. And even without taking investment growth or salary increases into account, it would be worth in the region of

£52,000 at age 55. And if I assume modest net growth of 2% over ten years, the funds could be worth in the region of £58,000 at age 55.

So, I think Mr G could've met his income needs by either opting into the BPS2 or moving to the PPF as he could've simply drawn down whatever extra funds he required on top of the approximate £1,100 per month he and his wife would've already been receiving. And I'm satisfied that withdrawing an additional income of up to £400 per month (depending on Mr G's needs) would've been sustainable until Mr G's state pension became payable. So, it's evident that Mr G already had flexibility in his pension planning by virtue of his employer's DC scheme.

Overall, I don't think Mr G should've been advised to transfer out of the DB scheme just to gain additional flexibility that he didn't yet need. Mr G was around ten years away from his retirement and I don't think his plans to retire early were concrete – it was entirely possible that Mr G could've continued working closer to age 65. Nevertheless, even if I could accept that Mr G did want to retire as early as age 55, I think he could've done so by either opting into the BPS2 or moving to the PPF. This was because he could've met his income requirements through his guaranteed pension, Mrs G's income and by taking extra income from his DC scheme.

### *Death benefits*

Niche recorded another of Mr G's objectives as having better death benefits. Death benefits are an emotive subject and of course most people would like their loved ones to be taken care of when they die. And I'm sure that the idea of leaving a large sum to his family in the event of his death sounded attractive to Mr G, as it would to most people. But whilst I appreciate death benefits are important to consumers, and Mr G might have thought it was a good idea to transfer his BPS benefits because of this, the priority here was to advise Mr G about what was best for his retirement provisions. And a pension is primarily designed to provide income in retirement rather than as a means of providing a legacy.

The suitability report said that transferring would likely lead to increased death benefits for his wife and children. But I think that was misleading because the sum left on Mr G's death was dependent on investment returns. And if Mr G lived a long life or investment returns were poor, there may not have been a large sum to pass on, as the cash flow analysis shows. I also don't think Niche gave enough importance to the death benefits Mr G already had with his existing pension – his younger wife would have received a guaranteed, escalating spouse's pension for life, which would have been very valuable if Mr G predeceased her. And while Mr G's children were unlikely to be eligible for a pension on his death, I'm mindful that he could've nominated any beneficiaries of his choosing for his DC pension. So, overall, I think Mr G already had sufficient death benefits through his existing arrangements.

And if Mr G had genuinely wanted to leave a legacy for his children or more to his wife, which didn't depend on investment returns or how much of his pension fund remained on his death, then I think Niche should have instead explored life insurance more fully. It appears that Niche did look at whole of life assurance; but as there is no mention of it in the suitability report, it appears it was discounted. That may have been due to the cost – the quotes I've seen show policies with guaranteed premiums being upwards of £47 per month before underwriting. But Niche based the quote on the transfer value of Mr G's pension benefits, so it essentially assumed that he would pass away on day one following the transfer and that isn't realistic. Ultimately, Mr G wanted to leave whatever remained of his pension to his spouse or children, which would be a lot less than this if he lived a long life. So, Niche should have asked Mr G how much he would ideally like to leave to his children and/or wife, and how much he could afford to contribute. Insurance on this basis was likely to be a lot

cheaper to provide and would have enabled him to leave a legacy without risking his retirement income.

Overall, I don't think different death benefits available through a transfer to a SIPP justified the likely decrease of retirement benefits for Mr G. And I don't think Niche did enough to highlight the value of Mr G's existing death benefits or to explore the alternatives available to Mr G to meet this objective.

### *Concerns about financial stability of BSPS*

It doesn't appear from the documents I've seen that Mr G was particularly motivated to transfer out of the BSPS because of any concerns he had about his employer or the possibility of the scheme entering the PPF. Nevertheless, I've considered the possibility that Mr G had those concerns and that he was also inclined to transfer out for that reason.

In those circumstances it was Niche's obligation to give Mr G an objective picture and recommend what was in his best interest. If Mr G was concerned about the BSPS moving to the PPF, Niche should've reassured him that he wasn't likely to be able to match or improve on the benefits he'd be entitled to if the scheme entered the PPF, particularly if he retired early.

Furthermore, the scheme moving to the PPF was only one of the outcomes; if Niche had delayed giving the advice it could've provided him with the details of the BSPS2. While Mr R may have been reluctant to join this scheme, I think Niche could've reassured Mr G that the BSPS2 would've provided him with a secure, guaranteed income that would've most likely met his needs whenever he decided to retire and an income that he wouldn't be able to improve on if he transferred out.

### *Summary*

I accept that Mr G may have been motivated to transfer out of the BSPS when he met with Niche. And I appreciate that having control and flexibility of income, the option to retire and drawdown income at age 55, and the potential for higher death benefits on offer through a SIPP would have sounded attractive to Mr G. But Niche wasn't there simply to just arrange what Mr G might have thought he wanted. It was obliged to really understand what Mr G needed, to give him an objective picture and to recommend what was in his best interest.

And ultimately, I don't think the advice Niche gave to Mr G was suitable. He was giving up a guaranteed, risk-free and increasing income under the BSPS2. By transferring, he was very likely to obtain lower retirement benefits and in my view, there were no compelling reasons which would justify a transfer and outweigh this. Mr G shouldn't have been advised to transfer out of the scheme based on an insubstantial wish to retire at 55 and have control and flexibility of income. And in my view, the potential for higher death benefits wasn't worth giving up the guarantees associated with Mr G's DB scheme. So, I think Niche should've advised Mr G not to transfer to a personal pension.

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 G had at least nine years before he expected to retire, and he was prepared to work for longer if he needed to. So, I don't think he was committed to retiring at 55 come what may. As a result, 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 G would've retained the ability to transfer out of the scheme nearer to his retirement age if he needed to – this was explained in the time to choose booklet. Also, Mr G was married, and his wife'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 G chose to do so). The annual indexation of his pension when in payment was also more advantageous under the BSPS2. So, I think Niche should've advised Mr G to opt into the BSPS2.

Niche may argue Mr G would have transferred even if Niche advised against it, either by insisting with Niche or by using another independent financial adviser. So I've considered whether Mr G would have gone ahead anyway, had Niche advised him not to transfer out of his DB scheme. But I've seen nothing to make me think Mr G was an insistent client or that he would have approached another independent financial adviser. He was an inexperienced investor, with a balanced attitude to risk. And his BPS pension accounted for the majority of his and his wife's retirement provision. So if Niche had provided Mr G with clear advice against transferring out of the BPS that explained why it wasn't in his best interest, I think Mr G would have accepted that advice.

I'm not persuaded that Mr G's concerns about the BPS2 were 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 Niche had explained Mr G was unlikely to exceed the benefits available to him through the BPS2 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.

So, overall, I think Mr G would've opted into the BPS2 if he'd been advised to do so. And so Niche should compensate Mr G for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology. And it is the benefits available to him through the BPS2 at age 65 that should be used for comparison purposes.

### **Putting things right**

On 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance and set out its proposals in a consultation document - [CP22/15-calculating redress for non-compliant pension transfer advice](#).

In this consultation, the FCA said that it considers that the current redress methodology in [Finalised Guidance \(FG\) 17/9](#) (Guidance for firms on how to calculate redress for unsuitable defined benefit pension transfers) remains appropriate and fundamental changes are not necessary. However, its review has identified some areas where the FCA considers it could improve or clarify the methodology to ensure it continues to provide appropriate redress.

A policy statement was published on 28 November 2022 which set out the new rules and guidance-<https://www.fca.org.uk/publication/policy/ps22-13.pdf>. The new rules will come into effect on 1 April 2023.

The FCA has said that it expects firms to continue to calculate and offer compensation to their customers using the existing guidance in FG17/9 for the time being. But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with the new rules and guidance.

We've previously asked Mr G whether he preferred any redress to be calculated now in line with current guidance or wait for the any new guidance/rules to be published. He didn't make a choice, so as set out previously I've assumed in this case he doesn't want to wait for any new guidance.



I am satisfied that a calculation in line with FG17/9 remains appropriate and, if a loss is identified, will provide fair redress for Mr G.

Niche must therefore undertake a redress calculation in line with the regulator's pension review guidance as updated by the Financial Conduct Authority in its Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers. And it is the benefits available to him through the BSPS2 that should be used for comparison purposes.

For clarity, Mr G has no plans at present to retire any earlier than age 65. So, compensation should be based on his normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

This calculation should be carried out as at the date of my final decision and using the most recent financial assumptions at the date of that decision. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr G's acceptance of my final decision.

Niche may wish to contact the Department for Work and Pensions (DWP) to obtain Mr G's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P). These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the occupational scheme on Mr G's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr G's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr G as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to his likely income tax rate in retirement - presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

The payment resulting from all the steps above is the 'compensation amount'. This amount must where possible be paid to Mr G within 90 days of the date Niche receives notification of his acceptance of my final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes Niche to pay Mr G.

Income tax may be payable on any interest paid. If Niche deducts income tax from the interest, it should tell Mr G how much has been taken off. Niche should give Mr G a tax deduction certificate in respect of interest if Mr G asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above - and so any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90 day period in which interest won't apply.

If the complaint hasn't been settled in full and final settlement by the time any new guidance or rules come into effect, I'd expect Niche to carry out a calculation in line with the updated rules and/or guidance in any event.

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 Niche Independent Financial Advisers Limited to pay Mr G the compensation amount as set out in the steps above, up to a maximum of £160,000.

Where the compensation amount does not exceed £160,000, I additionally require Niche Independent Financial Advisers Limited to pay Mr G any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I would only require Niche Independent Financial Advisers Limited to pay Mr G any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Niche Independent Financial Advisers Limited pays Mr G the balance. I additionally recommend that any interest calculated as set out above on this balance to be paid to Mr G.

If Mr G accepts my final decision, the money award becomes binding on Niche Independent Financial Advisers Limited.

My recommendation would not be binding. Further, it's unlikely that Mr G can accept my decision and go to court to ask for the balance. Mr G may want to consider getting independent legal advice before deciding whether to accept any final decision.

Niche Independent Financial Advisers Limited should provide details of its calculations to Mr G in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 31 January 2023.

Hannah Wise  
**Ombudsman**