DRN-3459598

The complaint

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

What happened

In March 2016, Mr R's employer announced that it would be examining options to restructure its business, including decoupling the BSPS (the employers' DB scheme) 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 private pension arrangement.

Mr R approached Niche in 2017 to discuss his pension and retirement needs as he was concerned about the security of his DB scheme. On 4 October 2017 Niche completed a fact-find to gather information about Mr R's circumstances and objectives. Niche also carried out an assessment of Mr R's attitude to risk, which it deemed to be ''moderately cautious' – a rating of 4 on a scale of 1-10.

Around the same time Mr R's employer sent out 'Time to Choose' information asking members of the DB scheme what they wanted to do with their preserved benefits – either remain in the BSPS which would then move to the PPF, join 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.)

On 19 October 2017 Niche advised Mr R to transfer his BSPS benefits into a personal pension and invest the proceeds in investment funds, which Niche deemed matched Mr R's attitude to risk. In summary the suitability report said the key reasons for this recommendation were: to enable Mr R to achieve his goal of retiring at 57 and to withdraw money as he wished; to provide control of his investment; to provide for more flexible death benefits; and to address Mr R's concerns about the BSPS moving to the PPF.

Mr R accepted the recommendation and around £320,000 was subsequently transferred to his new personal pension.

In 2021 Mr R complained to Niche about the suitability of the transfer advice.

Niche didn't uphold Mr R's complaint. In summary it said the recommendation was not based on the pension achieving the required critical yield, but it was given on the basis of achieving Mr R's stated objectives. It said he wanted to use his pension in a different manner to the BSPS, so a like-for-like critical yield wasn't an appropriate comparison. It believes it carried out a fully informed advice process gathering all of the necessary personal information from Mr R to then tailor the outcome to his specific situation and objectives. It said it doesn't believe Mr R has been financially disadvantaged as a result of the advice and it considers he's now in the position he wanted to be in when he sought advice.

Dissatisfied with its response Mr R asked this service to consider his complaint. And an investigator upheld it and said Niche should pay Mr R compensation. In summary they said they didn't think the advice to transfer was in Mr R's best interests. They said the growth rate required to match Mr R's BSPS benefits was unlikely to be achievable and so it wasn't financially worthwhile. They also said it wasn't compatible with Mr R's moderately cautious attitude to risk. They said there wasn't a balanced appraisal of Mr R's options in the suitability report including the BSPS2, so they didn't think he was placed in an informed position. They went on to say that early retirement wasn't a realistic prospect for Mr R given what was recorded in the cash flow forecast and death benefits shouldn't have been prioritised over providing Mr R with an income in retirement. Overall they didn't think the reasons for transferring were realistic or justified what he was giving up.

While Niche said it disagreed with the investigator's conclusions and said it would be providing a response, it hasn't provided anything further. We recently reminded Niche that if it had anything it wanted us to consider it should let us know. But again nothing was received. I'm satisfied Niche has been given a fair and reasonable opportunity to respond and I think that if it wanted to do so it would've done so by now.

Because things couldn't be resolved informally, 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 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 for broadly the same reasons as the investigator. My reasons are set out below.

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

Financial viability

Niche carried out a transfer value analysis report (as required by the regulator) showing how much Mr R's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield). And this was based on his existing scheme benefits. But at the time of Niche's written advice of 19 October 2017, scheme members had been sent their 'Time to Choose' asking them what they wanted to do with their preserved benefits – either remain in the BSPS which would then move to the PPF, join the BSPS2 or transfer their BSPS benefits elsewhere.

This means that at the time of the advice basing the analysis on the existing scheme was somewhat redundant - the existing scheme was no longer an option so analysis of that scheme wasn't helpful to Mr R. I think it's reasonable to say that, in light of this Niche should've used the BSPS2 figures instead so Mr R had all the relevant information to make an informed decision. If this information wasn't available to Niche at the time of the advice, I think it ought reasonably to have known it was coming – so if this was the case I think it should've waited for the details of the new scheme.

I can see that within its business file submission, Niche has included an analysis report, which uses the BSPS2 details to produce the required critical yields. But the report has a print date of December 2017, which is after it gave Mr R advice. It's also the case that the suitability report only refers to the critical yields based on the existing scheme details. So I'm not persuaded this was used in the advice and discussions with Mr R. But it does mean I can refer here to the more accurate growth rates when comparing Mr R's DB scheme benefits.

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 R was 44 at the time of the advice and it was recorded that he wanted to retire at either 55 or 57. Niche produced a Transfer Value Analysis ('TVAS') report, which shows that the growth rate required to match Mr R's benefits under the existing BSPS at age 55 if he transferred to a personal pension was 11.61%, assuming he took a full pension. No figure was produced for the option of a reduced pension and a tax-free cash lump sum. The critical yield required to match the benefits provided through the PPF was 7.47% if Mr R took a full pension and 6.92% if he took tax-free cash and a reduced pension.

But as I've said above, at the time of the formal written advice Mr R remaining in his existing DB scheme wasn't an option. So, Niche should've used the details of the BSPS2 and produced the critical yields applicable to the BSPS2 benefits instead.

Looking at the analysis report dated December 2017 where the BSPS2 details were used - but after the advice was provided - this shows the analysis was carried out at age 57 rather than age 55. But the growth rate required to match Mr R's benefits under the BSPS2 at age 57 was 7.63% assuming he took a full pension and 6.17% if he took a reduced pension and a tax-free cash lump sum. The critical yield required to match the benefits provided through the PPF was 5.72% if Mr R took a full pension and 5.39% if he took tax-free cash and a reduced pension.

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 4.0% per year for 12 years to retirement (it was 3.8% per year for 10 years to retirement assuming a retirement age of 55.) 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 R's recorded 'moderately cautious' attitude to risk and also the term to retirement. In my view there would be little point in Mr R 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, the critical yield if Mr R took a full pension at age 57 was 7.63% as produced in the December report. And this figure was significantly higher than the discount rate and higher than the regulator's middle projection rate – it was in fact close to the upper projection rate. Given this, I think it was clear Mr R was likely to receive benefits of a substantially lower overall value than those provided by the BSPS2 if he transferred to a person pension, as a result of investing in line with a 'moderately cautious' attitude to risk. Because of the required sustained growth rate, I think it is clear the transfer was not compatible with Mr R's attitude to risk. In my view, to have come close to achieving the level of growth needed, it would have required Mr R to take a higher level of risk than his recorded appetite. And even then I think it's likely Mr R would have been no better off financially at retirement if he transferred out. I also think that, given the critical yields required to match the benefits provided through the PPF, the situation was no different.

I'm mindful that Mr R was not married and it's likely the critical yield figure was based on the BSPS2 providing a spouses pension, which wouldn't have been important to Mr R at this time. But Mr R had a partner. And although it's recorded that he had no plans to marry, it's possible that he might get married in the future at which point this benefit would become important. In any event, the critical yield accounts for escalating benefits so I still consider it gives a good indication of the value of benefits Mr R was considering giving up. It's also the case that the regulator required Niche to provide it and so deems it a necessary and important part of the decision-making process.

So given Mr R was likely to receive lower overall retirement benefits by transferring to a personal pension, for this reason alone I don't think a transfer out of the DB scheme was in his best interests. Of course, financial viability isn't the only consideration when giving transfer advice. I accept there might be other considerations which mean a transfer is suitable and in Mr R's best interests, despite providing overall lower benefits. And it seems Niche believed this to be the case, because in the suitability letter the adviser said they wouldn't recommend the transfer based on the critical yield. But they said because Mr R wanted to use his pension in a different manner to the BSPS, i.e. there were other considerations or reasons, they did recommend the transfer.

I've therefore considered below whether such other reasons applied here.

Flexibility / control and income needs

One of the key reasons Niche recommended the transfer was because it said it would provide Mr R with flexibility – it would allow him to achieve his goal of retiring at 57 and have control over the level of income he withdrew from his pension.

But I don't think Mr R knew with any certainty whether he required flexibility in retirement – in my view the ability to control the level of income taken was simply a feature or consequence of moving to a personal pension arrangement rather than a genuine objective of Mr R's. And in any event, I don't think he needed to transfer his DB scheme benefits to achieve flexibility if that's what he ultimately required.

Mr R was 44 years old at the time of the advice. And while I don't think it would be unreasonable for him to have started to think about his future retirement, there's nothing to show or suggest that he had anything that could reasonably be described as concrete plans for retirement. The advice paperwork referred to his preferred retirement age of either 55 or 57, which appears to have been driven by the earliest date Mr R could take his pension benefits (subject to legislation) rather than any particular need or plan. In my view, most people when asked would like to retire at the earliest opportunity. As Mr R still had more than 10 years of his working life in front of him before he could 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 R to give up his guaranteed benefits now when he didn't reasonably know what his needs in retirement would be.

If Mr R wanted to retire early he already had the option to do so – he didn't have to transfer out to achieve this. I accept that Mr R couldn't take his DB scheme benefits flexibly – although he could choose to take a cash lump sum and a reduced annual pension - he had to take those benefits at the same time. But again, nothing indicates that Mr R had a need to take a cash lump sum and defer taking his income, or to vary his income throughout retirement. The expenditure in retirement analysis carried out by Niche records that Mr R expected his expenditure to stay the same throughout.

Importantly here, Mr R also had his workplace DC pension scheme, which both he and his employer were contributing to at a combined rate of 16%. At Mr R's current income and with the potential of at least 13 years of contributions ahead, this had the potential to be worth around £100,000 even accounting for modest growth. Given the nature of a DC scheme, this already provided Mr R with flexibility – he wasn't committed to take these benefits in a set way. He could've taken lump sums as and when required and adjusted the income he took from it according to his needs. So, I think if Mr R retained his DB pension, this combined with his new workplace pension, would've given him the flexibility to retire early - if that's what he ultimately decided – and meet his income needs.

So in any event, Mr R didn't need to transfer his DB scheme benefits at this stage to a personal pension arrangement in order to achieve flexibility in retirement. Of course, if Mr R did in fact have a greater need for flexibility beyond that which he already had, I think this could've been explored closer to his intended retirement age, which as I've said was still some years away. While this wouldn't have been possible if Mr R's scheme moved to the PPF, if he opted to join the BSPS2 he would've retained the ability to transfer out nearer to retirement, if indeed it was required. This ought to have been explained by Niche.

Turning to Mr R's income need. Niche carried out an expenditure analysis at retirement, which in one document records that he needed £2,284 a month. I think this was wrong as it allowed for £1,000 credit card spending, which I'm not persuaded would continue in retirement. And it appears this was corrected to £1,284 in the cashflow analysis Niche produced.

As I said above I've seen nothing to indicate that Mr R needed variable income. And nothing to indicate that either opting into the BSPS2 or moving with the scheme to the PPF wouldn't have provided Mr R with a solid income foundation upon which his other provision could supplement, to meet his overall need.

For example, at age 57 under the BSPS2, Niche's analysis of December 2017 shows that Mr R would receive an annual pension of £14,274. Given Mr R didn't have any known need for a cash lump sum – for example Mr R's mortgage only had a small balance remaining which would long be paid off - I think Mr R could've likely met his income needs until his state pension became payable. I think any shortfall, ignoring any provision Mr R's partner had, could've been met by accessing income and/or cash lump sums from his workplace DC scheme. Mr R would've likely had a not insignificant pension to draw on flexibly, as and when he needed, to top up his income or take additional lump sums. So, I think it's also the case that Mr R didn't have to sacrifice flexibility in retirement by opting into the BSPS2.

I accept at the time of the advice, the BSPS2 hadn't been established and it wasn't certain it would go ahead. And if Mr R had opted into the BSPS2 and it hadn't gone ahead, he would've moved with the scheme to the PPF. At age 57 Niche's analysis of December 2017 shows that he would've been entitled to an annual pension of just under £12,000. This was lower than the pension he'd be entitled to under the BSPS2, but I don't think it was substantially lower such that it should've made a difference to the recommendation. As I've said above, Mr R would've likely had his DC scheme to draw on until his state pension became payable - as well as any provision his partner might have had - to supplement their household income. So, I still think Mr R could've met his needs in retirement even if the BSPS2 hadn't gone ahead and he'd had to move with the scheme to the PPF.

Overall, I think Mr R could've likely met his income needs in retirement through the BSPS2 or the PPF based on a retirement age of 57. So, I don't think it was in Mr R's best interests for him to transfer his pension just to have flexibility, that I'm not persuaded he really needed.

Death benefits

The suitability report said that the death benefits available to a personal pension were appealing to Mr R because he wasn't married and he would be free to nominate who received any benefits after his death.

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 was likely an attractive feature to Mr R. But whilst I appreciate death benefits are important to consumers, and Mr R might have thought it was a good idea to transfer his BSPS benefits to a personal pension because of this, the priority here was to advise Mr R about what was best for his retirement provisions.

A pension is primarily designed to provide income in retirement not as a legacy provision tool. So I don't think the potential for greater or different death benefits should have been prioritised over this and Mr R's security in retirement.

And I say potential because the sum left on Mr R's death was dependent on investment returns – so if he lived a long life, and/or investment performance was lower than expected, there may not have been a large sum to pass on anyway.

In any event, Niche ought reasonably to have known that Mr R had generous death-in-service cover through his employer if he died before retirement. So he already had lump sum death benefits available, which I see no reason why he couldn't nominate his partner to receive if he hadn't already done so. And it also knew that Mr R was paying into his DC scheme and I think he would've been able to nominate his partner as beneficiary of this plan too – again if he hadn't already done so.

I can see that in its business file submission, Niche has included some whole of life assurance quotes with a sum assured for the full transfer value amount. But I can't see any reference to this in the suitability report - so I can't fairly say that this was properly considered or discussed with Mr R as an alternative.

As I said above, Mr R had death-in-service benefit through his employer, so it's possible he already had sufficient life cover in place to provide for his family. But if Mr R genuinely wanted to leave a legacy for his partner over and above that which was already available, and which didn't depend on investment returns, I think Niche ought to have explored in greater detail, and ultimately recommended, additional life cover. And the starting point shouldn't have been for the full transfer value - basing the quote on this essentially assumed that he would pass away on day one following the transfer, which isn't realistic - but ought to have been considered in terms of how much Mr R wanted to leave his family, after taking into account the above existing means. And this could've been explored on a whole of life or term assurance basis, which was likely to be cheaper to provide, particularly as Mr R was relatively young and in good health.

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

Concerns about financial stability of BSPS

I have no doubt that Mr R was concerned about his pension. His employer had recently made the announcement about its plans for the scheme and he was worried for his pension given the general uncertainty. There was also lots of negative sentiment about the PPF.

So it's quite possible that Mr R was leaning towards the decision to transfer because of these concerns and what might happen. But it was Niche's obligation to give Mr R an objective picture and recommend what was in his best interests.

As I've already explained, I think Niche ought to have used the details of the proposed BSPS2 – waiting for them if necessary - so the advice could properly take the benefits available to Mr R through the BSPS2 into account. Had it done so I think this would've alleviated Mr R's concerns about the scheme moving to the PPF.

In any event, even if the BSPS2 didn't go ahead, I think that Niche should've reassured Mr R that the scheme moving to the PPF wasn't as concerning as he thought or was led to believe. As I set out above, the income available to Mr R through the PPF would've still provided a solid base, which his other means could supplement to likely meet his overall income need at retirement. He was also 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 Mr R's concerns should've led to Niche recommending he transfer out of the DB scheme altogether.

Summary

I accept that Mr R was likely motivated to transfer out of the BSPS and that his concerns about his employer and the scheme were real. And I don't doubt that the flexibility, control and potential for higher or different death benefits on offer through a personal pension would've sounded like attractive features to Mr R. But Niche wasn't there to just transact what Mr R might have thought he wanted or which sounded attractive. The adviser's role was to really understand what Mr R needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr R was suitable. He was giving up a guaranteed, risk-free and increasing income - whether through the proposed BSPS2 or the PPF - and by transferring, I think Mr R was likely to obtain lower overall retirement benefits. And I don't think there were any other particular or compelling reasons which would justify the transfer and outweigh this. So, I don't think it was in Mr R's best interests for him to transfer his DB scheme to a personal pension at this time; particularly when Mr R had the opportunity of opting into the BSPS2.

So, I think Niche should've advised Mr R to opt into the BSPS2. I appreciate that the BSPS2 wasn't guaranteed to go ahead when the advice was given. But I think it was clear to all parties that it was likely to be going ahead. I'm mindful that Mr R indicated he wanted to retire early at 57, but as I said above, I don't think his plans could reasonably be considered concrete given his circumstances. 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. I'm also mindful the annual indexation of his pension when in payment was also more advantageous under the BSPS2 and by opting into this scheme, Mr R would've retained the ability to transfer out of the scheme (if his needs demanded it) nearer to retirement.

Of course, I have to consider whether Mr R would've gone ahead anyway, against Niche's advice.

I've considered this carefully, but I'm not persuaded that Mr R would've insisted on transferring out of the BSPS against Niche's advice. I say this because, while Mr R was motivated to transfer when he approached Niche, on balance, I still think Mr R would've listened to and followed Niche's advice if things had happened as they should have and it recommended he opt into the BSPS2.

While Mr R had some investment experience, he was not, in my view, an experienced investor who possessed the requisite skill, knowledge or confidence to go against the advice they were given in complex pension matters. Furthermore Mr R had a moderately cautious attitude to risk and his DB scheme pension accounted for the majority of his private retirement provision at the time. So, if Niche had provided him with clear advice against transferring out of the BSPS, explaining why it wasn't in his best interests, I think he would've accepted that advice.

I'm not persuaded that Mr R's concerns about his employer 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. If Niche had explained that Mr R could meet all of his objectives without risking his guaranteed pension to do so, I think that would've carried significant weight. So, I don't think Mr R would have insisted on transferring out of his scheme against Niche's advice.

So overall, I think Niche should compensate Mr R for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

And as per the above, it is the benefits available to him through the BSPS2 that should be used for comparison purposes.

I can see the investigator also recommended an award of £350 for the distress and inconvenience the matter has caused Mr R. So I've also thought about whether it's fair to award compensation for distress and inconvenience - this isn't intended to fine or punish Niche – which is the job of the regulator. But I think it's fair to recognise the emotional and practical impact this had on Mr R. Taking everything into account, including that I consider Mr R is now at the age when his retirement provision is of greater importance, I think the unsuitable advice has caused him distress. So I think an award of £350 is fair in all the circumstances.

Putting things right

On 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance and has set out its proposals in a consultation document - https://www.fca.org.uk/publication/consultation/cp22-15.pdf

In this consultation, the FCA has 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 FG 17/9 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 R whether he preferred any redress to be calculated now in line with current guidance or wait for the new guidance/rules to come into effect.

Mr R would like his complaint to be settled in line with new guidance /rules. I consider it's fair that Niche calculates Mr R's redress in line with new guidance and rules when they come into effect.

A fair and reasonable outcome would be for the business to put Mr R, as far as possible, into the position he would now be in but for the unsuitable advice. I consider if suitable advice had been given Mr R would have opted into the BSPS2. So Niche should use the benefits offered by BSPS2 for comparison purposes.

The basic objective of the amendments to the redress methodology still remains to put a consumer, as far as possible, into the position they would be in if the business had advised them to remain in the DB scheme. Having reviewed the FCA's consultation and policy statement, I'm satisfied that the changes still reflect a fair way to compensate Mr R.

Niche must undertake a redress calculation in line with the updated methodology as soon as any new rules and/or guidance come into effect (rather than to calculate and pay any due compensation now in line with FG17/9).

For clarity, Mr R has no firm plans to retire, so compensation should be based on a normal retirement age of 65.

In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly once any new guidance/rules come into effect.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr R'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 R 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 compensation amount must where possible be paid to Mr R within 90 days of the date any changes to DB transfer redress guidance or new rules come into effect and Niche has received notification of Mr R's acceptance of my decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date any changes to DB transfer redress guidance or new rules come into effect to the date of settlement for any time, in excess of 90 days, that it takes Niche to pay Mr R.

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

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

<u>Determination and money award:</u> I uphold this complaint and require Niche Independent Financial Advisers Limited to pay Mr R the compensation amount as set out in the steps above, up to a maximum of £160,000.

Niche Independent Financial Advisers Limited should also pay Mr R £350 for the distress and inconvenience caused in this matter.

Where the compensation amount does not exceed £160,000, I would additionally require Niche Independent Financial Advisers Limited to pay Mr R 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 R any interest as set out above on the sum of £160,000.

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

If Mr R accepts this decision, the money award becomes binding on Niche Independent Financial Advisers Limited.

My recommendation would not be binding. Further, it's unlikely that Mr R can accept my decision and go to court to ask for the balance. Mr R 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 R to accept or reject my decision before 2 February 2023.

Paul Featherstone
Ombudsman