DRN-3459649

The complaint

Mr T 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 T'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 T approached Niche in July 2017 to discuss his pension and retirement needs as he was concerned about the security of his DB scheme. On 27 July 2017 Niche completed a fact-find to gather information about Mr T's circumstances and objectives. Niche also carried out an assessment of Mr T's attitude to risk, which it deemed to be ''cautious balanced' – a rating of 5 on a scale of 1-10.

On 17 August 2017 Niche advised Mr T to transfer his BSPS benefits into a personal pension and invest the proceeds in a an investment fund, which Niche deemed matched Mr T's attitude to risk. In summary the suitability report said the key reasons for this recommendation were: to provide flexibility in how and when Mr T accessed his retirement benefits; to provide control of his investment; to provide for more flexible death benefits for Mr T's family; and to address Mr T's concerns about the BSPS moving to the PPF.

Mr T accepted the advice and in October 2017 around £376,000 was transferred to his new personal pension.

By way of further background - around the same time as Mr T's transfer completed, 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 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).

In 2021 Mr T complained to Niche, via the Financial Ombudsman Service, about the suitability of the transfer advice.

In summary Mr T said he was concerned that the returns needed from his pension weren't realistically achievable, which had prompted him to question the original advice.

Niche didn't uphold Mr T'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 T's stated objectives. It believes it followed its strict advice process, took into consideration all of Mr T's financial situation and that the recommendation was suitable. It said it doesn’t believe Mr T has been financially disadvantaged.

Dissatisfied with its response Mr T asked this service to consider his complaint. And an investigator upheld it and said Niche should pay Mr T compensation. In summary they said they didn’t think the advice to transfer was in Mr T’s best interests. They said the growth rate required to match Mr T’s BSPS benefits was unlikely to be achievable and wasn’t compatible with his cautious balanced attitude to risk. They said the cash flow forecast produced by Niche was confusing because it referred to Mr T’s retirement age of 55, 57 and also reference was made to age 65. Because Mr T’s retirement was some way off, they didn’t think the assumptions made about his expenditure in retirement were accurate as they’d likely be subject to change. They went on to say that Mr T already had flexibility in retirement because his workplace Defined Contribution (‘DC’) scheme would provide this; death benefits shouldn’t have prioritised over Mr T’s income in retirement; and Niche should’ve allayed Mr T’s concerns about the PPF. They concluded Niche should pay compensation in line with the regulator’s pension review guidance and that it is the BSPS2 which should be used for comparison purposes.

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’ve recently reminded Niche that if it has anything it wants us to consider it should let us know. But again nothing has been received. I’m satisfied Niche has been given the 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 T'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 T'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 17 August 2017, scheme members had been told that, if the Regulated Apportionment Arrangement ('RAA') was approved (under pensions law, a RAA is a restructuring mechanism which allows a financially troubled employer to detach itself from its liabilities in respect of a DB pension scheme) they would have a choice - either move into a new scheme (BSPS2) or remain in the existing scheme and move with it to the PPF.

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 T. I think it's reasonable to say that, in light of the announcement, Niche should've waited for the details of the new scheme and used the BSPS2 figures instead so Mr T had all the relevant information to make an informed decision.

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 T advice and after his transfer had completed. 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 T. But it does mean I can refer here to the more accurate growth rates when comparing Mr T's DB scheme benefits.

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.

Mr T was 40 at the time of the advice. In my view the advice paperwork as a whole paints a somewhat confusing picture as to Mr T's intended retirement date. I say this because in the various documents Mr T's retirement age is referenced as being 55, 57 and 65. But I understand Mr T's preferred retirement age was 57.
Niche produced a Transfer Value Analysis ('TVAS') report, which shows that the growth rate required to match Mr T's benefits under the existing BSPS at age 65 if he transferred to a personal pension was 5.63%, 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 4.03% if Mr T took a full pension and 3.72% 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 T remaining in his existing DB scheme wasn't an option. So, Niche should've waited until details of the BSPS2 were provided and produced the critical yields applicable to the BSPS2 benefits instead. Notwithstanding this, it's not clear to me why Niche only provided analysis at age 65 when Mr T had indicated his preferred retirement age was 57. So in any event this wasn't an accurate comparison to make and wasn't helpful for Mr T in making an informed decision.

Looking at the analysis report dated December 2017 - while again no comparison was made of Mr T's benefits at age 57, this one does show the analysis at age 55, which is closer to Mr T's indicated preferred retirement age. The growth rate required to match Mr T's benefits under the BSPS2 at age 55 was 8.64% assuming he took a full pension and 7.33% 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 6.07% if Mr T took a full pension and 5.78% if he took tax-free cash and a reduced pension.

This compares with the discount rate of 4.2% per year for 14 years to retirement in this case (the rate assuming a retirement age of 57 was 4.3% for 16 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%.

I've taken this into account, along with the composition of assets in the discount rate, Mr T's recorded 'cautious balanced' attitude to risk and also the term to retirement. In my view there would be little point in Mr T 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 T took a full pension at age 55 was 8.64% as produced in the December report. And while no figure was produced comparing Mr T's benefits at age 57, I think it's reasonable to assume that it would've been close to this figure. And this figure was higher than the discount rate and higher than the regulator's upper projection rate. Given this, I think it was clear Mr T 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 'cautious balanced' attitude to risk. Because of the required sustained growth rate, I think it is clear the transfer was not compatible with Mr T's attitude to risk. To have come close to achieving the level of growth needed, in my view it would have required Mr T to take a higher level of risk than his recorded appetite. And even then I think it's likely Mr T 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.

So given Mr T 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 T'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 alone - albeit the reference to the critical yield was the one to age 65 and based on the existing BSPS scheme.

I've 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 T with flexibility – it would allow him to decide when and how to drawdown his pension.

But I don't think Mr T knew with any certainty whether he required flexibility in retirement – in my view the reference to flexibility was simply a feature or consequence of moving to a personal pension arrangement rather than a genuine objective of Mr T'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 T was only 40 years old. 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. And this isn't surprising – he still had a significant period of his working life in front of him. Because of this, 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 T to give up his guaranteed benefits now when he didn't reasonably know what his needs in retirement would be.

Importantly here, Mr T also had his workplace DC pension scheme, which both he and his employer were contributing to at a combined rate of 16%. At Mr T's current income and with the potential of at least 17 years' contributions ahead, this had the potential to be worth in excess of £80,000 not accounting for any growth. Given the nature of a DC scheme, this already provided Mr T 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 T 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 met his income needs.

So in any event, Mr T 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 T 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 many years away. While this wouldn't have been possible if Mr T'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 T's income need – while I'm not persuaded Mr T could reasonably know with any degree of certainty what his income need in retirement would be, it was recorded that he would need just over £2,000 a month. Looking at Mr T's circumstances, I've seen nothing to indicate that he 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 T with most, if not all of his income need – at the very least it would've provided a solid income foundation upon which his other provision could supplement, to meet his overall need.

For example, at age 55 (so two years before Mr T indicated he wanted to retire) under the BSPS2, Niche's analysis of December 2017 shows that Mr T would receive an annual pension of just under £20,000 if he took a full pension. There was nothing to indicate Mr T had a known need for a cash lump sum – for example given the outstanding mortgage balance on his home at the time of the advice and the monthly repayment, this suggests it would likely be repaid around the time Mr T wanted to retire - so I think Mr T could've met his income need through his DB scheme. Mr T had rental income in excess of £800 a month, which it was indicated would likely continue into retirement and he also had in excess of £60,000 in savings, which he could likely add to further while he continued working.

So I think this combined with the DB scheme income broadly met his needs. If there was a shortfall, then I think this could've been met by accessing income and/or by taking tax-free cash from his DC scheme. Mr T 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. This of course ignores Mr T's state pension, which would come later on in retirement, and any pension provision his partner had. So I think it's also the case that Mr T didn't have to sacrifice flexibility in retirement by remaining in his DB scheme and opting into the BSPS2.

I accept at the time of the advice, the BSPS2 hadn't been established and the announcement about scheme members' likely upcoming choice had only just taken place. So it wasn't certain it would go ahead. And if Mr T had opted into the BSPS2 and it hadn't gone ahead, he would've moved with the scheme to the PPF. At age 55 – again two years below the age Mr T indicated he would like to retire – he would've been entitled to an annual pension of just under £15,000. 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 T would've likely had his rental income, his savings, his DC scheme to draw on until his state pension became payable, as well his partner's pension to supplement their household income. So, I still think Mr T 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 T 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 T'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 T because he wasn't married and he and his partner had no intention of marrying.

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 T. But whilst I appreciate death benefits are important to consumers, and Mr T 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 T 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 T's security in retirement. And I say potential, because the sum left on Mr T'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 T 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 T was paying into his DC scheme and 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 T as an alternative. Mr T has said that he already had life cover as well as joint cover for their home – presumably cover for the outstanding mortgage. And as I said above, Mr T also 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 T 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.
The starting point shouldn't have been for the full transfer value, but ought to have been considered in terms of how much Mr T 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 T 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 T. And I don't think Niche did enough to explore or highlight the alternatives available to Mr T to meet this objective.

Concerns about financial stability of BSPS

I have no doubt that Mr T 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 T was leaning towards the decision to transfer because of these concerns and what might happen. But it was Niche's obligation to give Mr T an objective picture and recommend what was in his best interests.

As I've already explained, I think Niche ought to have waited until the details of the proposed BSPS2 were known so the advice could properly take the benefits available to Mr T through the BSPS2 into account. Had it done so I think this would've alleviated Mr T'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 T 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 T 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 T's concerns should've led to Niche recommending he transfer out of the DB scheme altogether.

Summary

I accept that Mr T 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 T. But Niche wasn't there to just transact what Mr T might have thought he wanted or which sounded attractive. The adviser's role was to really understand what Mr T needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr T 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 T 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 T's best interests for him to transfer his DB scheme to a personal pension at this time; particularly given the information that Mr T would shortly be given the opportunity of opting into the BSPS2. So, I think Niche should've advised Mr T to remain in the BSPS.

Of course, I have to consider whether Mr T would've gone ahead anyway, against Niche's advice.

I've considered this carefully, but I'm not persuaded that Mr T would've insisted on transferring out of the BSPS against Niche's advice. I say this because, while Mr T was motivated to transfer when he approached Niche, on balance, I still think Mr T would've listened to and followed Niche's advice if things had happened as they should have and it recommended he stay in the scheme. Mr T was in my view an inexperienced investor who neither possessed the requisite skill, knowledge nor confidence to go against the advice they were given in pension matters. Furthermore Mr T's pension accounted for the majority of his 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 T'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 T 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 T would have insisted on transferring out of his scheme against Niche's advice.

If Mr T had stayed in BSPS, he would have shortly after had the choice to move to the PPF or transfer to the new BSPS2 scheme.

While Mr T indicated he wanted to retire early at 57, 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 T would've retained the ability to transfer out of the scheme (if his needs demanded it) nearer to retirement.

So overall, I think Niche should compensate Mr T 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 T. 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 T. Taking everything into account, including that I consider Mr T 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 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 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 T 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 T has chosen not to wait for the new rules / guidance to come into effect to settle his complaint.

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 T.

A fair and reasonable outcome would be for the business to put Mr T, as far as possible, into the position he would now be in but for Niche's unsuitable advice. I consider Mr T would have most likely remained in his DB scheme if suitable advice had been given and then opted into the BSPS2. So Niche should use the benefits offered by BSPS2 for comparison purposes.

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.

For clarity, Mr T has no plans to retire - 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 T's acceptance of the decision.

Niche may wish to contact the Department for Work and Pensions (DWP) to obtain Mr T'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 T's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr T'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 T 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 T 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 T.

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

<u>Determination and money award</u>: I uphold this complaint and require Niche Independent Financial Advisers Limited to pay Mr T 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 T £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 T 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 T 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 T the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr T.

If Mr T 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 T can accept my decision and go to court to ask for the balance. Mr T 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 T to accept or reject my decision before 19 January 2023.
Paul Featherstone
Ombudsman