Financial Ombudsman Service

The complaint

Mr P complains about the suitability of the advice provided by Niche Independent Financial Advisers Limited ("Niche") in November 2017 to transfer the value of his safeguarded benefits in the British Steel Pension Scheme ("BSPS") to a personal pension plan ("PPP").

Mr P is represented in this complaint by a law firm ("the Representative").

What happened

The events leading up to this complaint were set out in detail by our investigator in his assessment which he provided to both the Representative and Niche. I don't intend to repeat here what our investigator stated but will instead provide a summary.

In March 2016, Mr P's employer, Tata Steel UK Ltd ("Tata Steel"), announced that it would be examining options to restructure its business including decoupling the BSPS from the company. The BSPS was a defined benefits ("DB") pension scheme that provided a guaranteed lifetime income to members. The consultation with members referred to possible outcomes regarding their safeguarded benefits, one of which was a transfer to the Pension Protection Fund ("PPF") – the PPF is a statutory fund designed to provide compensation to members of DB pension schemes when their employer becomes insolvent. Tata Steel closed the BSPS to further benefit accrual from 31 March 2017.

In May 2017, the PPF announced that the terms of a Regulated Apportionment Arrangement had been agreed – this was approved by The Pensions Regulator in August 2017. Under the announced plans, Tata Steel agreed to set up and sponsor a new DB pension scheme, the BSPS2, subject to certain conditions relating to funding and size being satisfied.

In October 2017, these changes were communicated to BSPS members, including Mr P, under the *'Time to Choose'* exercise. This explained that BSPS members had three options regarding their safeguarded benefits:

1. Transfer to the PPF;
2. Transfer to the BSPS2; or
3. Transfer to an alternative pension plan such as a PPP.

Options 1 and 2 would've enabled Mr P to retain guaranteed pension income, albeit at a lower level than provided by the BSPS.

Members had to decide which option they wanted by 22 December 2017 – those that didn't choose an option remained in the BSPS and were ultimately transferred to the PPF. The details of Mr P's safeguarded benefits in the BSPS at that time were as follows:

- He had accrued 20 years and 6 months' qualifying service between September 1996 and March 2017;

- The scheme pension provided was based on his final salary, pensionable service and benefit accrual rate – as at the date of leaving the scheme in March 2017, his

annual scheme pension was £11,985.11. The scheme pension comprised several elements, each part of which would be revalued by a prescribed amount over the term to the scheme normal retirement age of 65 and, once in payment, would escalate annually by a prescribed amount.

- Payment of benefits before 65 would be subject to an early retirement reduction on a sliding scale – in simple terms, the earlier benefits were taken, the greater the reduction applied to the scheme pension. Broadly, this meant a 30% reduction would apply to the scheme pension if benefits were taken at age 55 and a 18% reduction at age 60;

- The revaluation and escalation rates were guaranteed in line with the BSPS rules;

- The estimated revalued annual scheme pension payable by the BSPS was £22,542 at age 65 and £18,529 at age 57;

- The cash equivalent transfer value of his safeguarded benefits was £303,377.14.

Mr P was concerned about what the announcement by Tata Steel meant for the security of his safeguarded benefits in the BSPS. He didn't trust Tata Steel's intentions and considered that the transfer value offered was too good to turn down. So he decided that he wanted to transfer the value of his safeguarded benefits away to a new private arrangement. He contacted Niche to obtain advice and to facilitate the transaction. He initially met one of its advisers in October 2017. A fact find document and attitude to risk questionnaire were completed which recorded the following information about Mr P:

- He was aged 39, in good health, single and had two financially dependent children aged 21 and 3. He was cohabiting with his girlfriend but their finances were kept separate. He had no plans to marry;

- He was employed by Tata Steel and was paid gross annual income of about £42,000. He intended to continue working in the steel industry until retirement. He ideally wanted to retire at age 57. His desired level of income at that age wasn't recorded. He expected to receive the full state pension at age 68;

- In addition to the value of his safeguarded benefits in the BSPS, he had been a member of Tata Steel's defined contribution ("DC") pension scheme since March 2017. The total annual contribution into his DC plan was 16% of his gross annual salary. This would increase in line with changes to his salary. As at October 2017, his DC pension plan was valued at about £2,000;

- Other than his residential home and pension arrangements, he didn't have any savings or investments;

- His liabilities comprised a mortgage of £41,000 on his residential home which was due to be repaid in about 12 years' time in 2029 and credit card debt of about £3,000;

- His risk profile was determined to be *'Cautious Balanced'*.

In the fact find document, Niche recorded that Mr P had several objectives attached to his safeguarded benefits in the BSPS, as follows:

> *"1/ Death benefits with a personal pension are a major factor given he is not married*
> *2/ Wants to benefit from market growth between now and retirement*

3/ Wants option to flexibly access his pension as he wishes from age of 57
4/ Wants to utilise his funds while he is young"

In November 2017, Niche issued a suitability report to Mr P recommending that he transfer the value of his safeguarded benefits in the BSPS to a PPP and invest it in different proportions in two funds to align with his *'Cautious Balanced'* risk profile. It confirmed the reasons why it recommended a transfer to a PPP in favour of the PPF and BSPS2 options for the following reasons:

- *"You will have complete control over the pension, how it is invested, and the level of income you withdraw from it from age 57 or later.*
- *This will allow you to achieve your goal of retiring from the steel industry at age 57, allowing you to withdraw as you wish.*
- *You will be free to nominate who you choose to receive any remaining benefits after your death, giving more flexible death benefits for both your partner and children.*
- *If your plan were to go into the PPF, which is a concern of yours, the required critical yield would be reduced to 4.37%. Again, whilst there are no guarantees, this is not unachievable."*

Mr P accepted the recommendation. The transfer to the PPP provider was completed on 19 December 2017. The costs associated with the recommendation were set out in Niche's suitability report, as follows:

Initial charge

- £5,000 – initial adviser charge payable to Niche

Ongoing annual charges deducted from PPP fund value

- £750 adviser charge payable to Niche
- 0.35% product charge
- 0.435% weighted average fund charges

In May 2018, Niche issued a second suitability report to Mr P. The report explained that, following an internal audit, it had identified its first suitability report didn't adequately detail the reasons Mr P had given for wanting to transfer away from the BSPS. The report then went on to specify those reasons in greater detail before going on to make the same recommendation that Mr P transfer to a PPP for the same reasons as stated in its first suitability report.

This complaint

In 2021, the Representative, on behalf of Mr P, complained to Niche about the suitability of its pension transfer advice. Niche didn't uphold this complaint. This was because it was satisfied that its advice had met its strict processes, took into consideration Mr P's financial situation and enabled him to be in a position to achieve his specific objectives. It remained satisfied that Mr P was now in the position he wanted to be in when he first sought advice from Niche.

One of our investigators considered this complaint and recommended that it be upheld. This was because he thought that Niche's recommendation to transfer wasn't in Mr P's best

interests and was therefore unsuitable. He reasoned that Mr P was over 17 years away from his preferred retirement age of 57, so there wasn't any urgency to transfer away at that time, particularly since there was insufficient clarity about what his circumstances and retirement income needs would be so far into the future. In addition, he wasn't persuaded that it was suitable for Mr P, who was an inexperienced investor, to relinquish guaranteed income and instead take on the investment risks associated with the pension transfer to a PPP.

To put things right, our investigator recommended that Niche carry out a redress calculation in line with the FCA's *'Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers'* on the basis that Mr P opted for the BSPS2 and would be a 20% income taxpayer in retirement. In addition, he recommended that Niche pay Mr P £300 compensation for the trouble and upset caused by its unsuitable recommendation.

The Representative, on behalf of Mr P, responded and stated that it agreed with the uphold outcome. It agreed that the BSPS2 should be used for comparison purposes and on the basis that Mr P would likely take benefits at age 65. It requested that Niche be directed to provide to it a breakdown of the loss assessment in a simple, easily understandable format.

Niche didn't accept our investigator's assessment and requested that this complaint be referred to an ombudsman for review. It stated that it believed it had sufficiently presented the relevant options to Mr P, which was clearly detailed in the paperwork. And that it considered his objectives to have been clear and specific rather than vague, as suggested by our investigator. As a result, it remained satisfied that its advice was suitable to meet Mr P's objectives.

While waiting for this complaint to be allocated to an ombudsman, our investigator contacted the parties in connection with the FCA's consultation launched on 2 August 2022 regarding new pension transfer redress guidance. The investigator asked the Representative to confirm with Mr P that in the event this complaint is ultimately upheld, whether he preferred redress to be calculated on the current methodology or the updated guidance expected to be implemented in early 2023. The investigator told the Representative that if we didn't receive an answer that we'd assume Mr P would prefer redress on the current methodology set out in *'Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers'*. As at the date of this final decision, the Representative didn't confirm which option Mr P preferred.

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.

When considering what's fair and reasonable, and in accordance with the Financial Services and Markets Act 2000 and the Dispute Resolution section in the FCA's handbook, I need to take into account relevant: law and regulations; regulators' rules, guidance and standards, and codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

I'd like to clarify that the purpose of this final decision isn't to repeat or address every single point raised by Niche and the Representative on behalf of Mr P. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

The FCA's suitability rules and guidance

Niche was authorised and regulated by the FCA at the time it provided its recommendation to Mr P. This meant that when it advised him it was required to follow the rules and consider the guidance in the Conduct of Business Sourcebook ("COBS") section in the FCA's Handbook.

Primarily, Niche was required under COBS 2.1.1R to *"act honestly, fairly and professionally in accordance with the best interests of its client"* in its dealings with Mr P. The suitability rules and guidance that applied when Niche provided its recommendation to Mr P were set out in COBS 9. The purpose of the rules and guidance are to ensure that businesses take reasonable steps to provide advice that is suitable for their clients' needs and to ensure they're not inappropriately exposed to a level of risk beyond their investment objectives and risk profile. To ensure that this is the case, and in line with the requirements in COBS 9.2.2R, the business must gather the necessary information for it to be confident its advice is suitable. Broadly speaking, this section of COBS 9 sets out the requirement for a regulated advisory business to undertake a "fact find" process.

There were also specific requirements and guidance relating to pension transfers involving safeguarded benefits, as was applicable to Mr P's case – these were contained in COBS 19.

COBS 19.1.2R required the following:

> *"A firm must:*
>
> *(1) compare the benefits likely (on reasonable assumptions) to be paid under a defined benefits pension scheme or other pension scheme with safeguarded benefits with the benefits afforded by a personal pension scheme, stakeholder pension scheme or other pension scheme with flexible benefits, before it advises a retail client to transfer out of a defined benefits pension scheme or other pension scheme with safeguarded benefits;*
>
> *(2) ensure that that comparison includes enough information for the client to be able to make an informed decision;*
>
> *(3) give the client a copy of the comparison, drawing the client's attention to the factors that do and do not* support *the firm's advice, in good time, and in any case no later than when the key features document is provided; and*
>
> *(4) take reasonable steps to ensure that the client understands the firm's comparison and its advice."*

Under the heading "Suitability", COBS 19.1.6G set out the following:

> *"When advising a retail client who is, or is eligible to be, a member of a defined benefits occupational pension scheme or other scheme with safeguarded benefits whether to transfer, convert or opt-out, a firm should start by assuming that a transfer, conversion or opt-out will not be suitable. A firm should only then consider a transfer, conversion or opt-out to be suitable if it can* ***clearly demonstrate, on contemporary evidence****, that the transfer, conversion or opt-out is in the client's best interests."* [my emphasis added]

COBS 19.1.7G also stated:

> *"When a firm advises a retail client on a pension transfer, pension conversion or pension opt-out, it should consider the client's attitude to risk including, where*

relevant, in relation to the rate of investment growth that would have to be achieved to replicate the benefits being given up."

And COBS 19.1.8G stated that:

> *"When a firm prepares a suitability report it should include:*
>
> *(1) a summary of the advantages and disadvantages of its personal recommendation;*
>
> *(2) an analysis of the financial implications (if the recommendation is to opt-out); and*
>
> *(3) a summary of any other material information."*

Businesses are required to follow these rules and consider the guidance because the FCA considers safeguarded benefits to be valuable. Based on the above regulatory rules and guidance, businesses advising on pension transfers should start by assuming that the existing DB pension scheme is suitable and to only recommend a transfer, which converts safeguarded benefits into flexible benefits, if it can clearly demonstrate it's in their client's best interests.

In assessing the suitability of Niche's recommendation, it's necessary for me to have due regard to the FCA's rules and guidance.

Mr P's situation

The situation for Mr P wasn't normal because the existing DB pension scheme, the BSPS, was closing. So he was essentially forced to transfer the value of his safeguarded benefits to a new scheme. He had three options:

1. Transfer to the PPF;
2. Transfer to the BSPS2; or
3. Transfer to an alternative pension plan such as a PPP.

It's undeniable that it was a period of great uncertainty for individuals such as Mr P. Many of these individuals were in a vulnerable position due to the uncertainty surrounding the future of the BSPS. I think the uncertainty only served to emphasise the need at that time for a balanced assessment of the options available and ultimately the provision of suitable advice. It's my view that any concerns Mr P had about the security of his safeguarded benefits should've been addressed and appropriately managed by the professional party in the transaction, Niche.

Options 1 and 2 would've enabled Mr P to retain guaranteed pension income, albeit at a lower level than provided by the BSPS. There were differences between the PPF and the BSPS2. For deferred members below the scheme normal retirement age, like Mr P, the PPF would provide compensation based on 90% of their accrued pension at the scheme normal retirement age (in effect a 10% reduction in benefits). The BSPS2 didn't apply such a reduction. The BSPS2 also provided the potential for discretionary increases to the accrued pension, a higher level of spouse's pension (in the event Mr P was married at retirement) and the option to transfer to an alternative pension to convert to flexible benefits at a later date when needs could be determined with greater accuracy than at 39 – the PPF didn't offer these additional features.

So while the situation was somewhat unusual, Mr P still had the option to retain guaranteed benefits in either the PPF or BSPS2. Due to his age and circumstances, it's my view Mr P

would've been better off choosing the BSPS2 instead of the PPF. Given the FCA's view on safeguarded benefits and what was known at that time, it's my fair and reasonable opinion that Niche should've started its advice process by assuming the BSPS2 was likely to be the most suitable option for Mr P and to only recommend a transfer to the PPP if it could clearly demonstrate it was in his best interests.

Niche's advice to Mr P

In the fact find document completed in October 2017, Niche recorded that Mr P had several objectives attached to his safeguarded benefits in the BSPS, as follows:

> *"1/ Death benefits with a personal pension are a major factor given he is not married*
> *2/ Wants to benefit from market growth between now and retirement*
> *3/ Wants option to flexibly access his pension as he wishes from age of 57*
> *4/ Wants to utilise his funds while he is young"*

This was re-confirmed in Niche's suitability report given to Mr P in November 2017 before it went on to recommend that he transfer to a PPP to achieve these objectives.

So the motivating factors for the pension transfer were changing the format of death benefits and to provide the opportunity for flexibility and early retirement. I've considered these objectives in greater detail in the sections below.

Before I go on, I want to deal with the two suitability reports Niche issued to Mr P, firstly in November 2017 and then in May 2018. Niche issued the second suitability report because it said it didn't adequately detail in its first report the reasons Mr P had given for wanting to transfer away from the BSPS. The second report contained more detail and analysis. However, it was issued to Mr P in May 2018 several months *after* the transaction completed on 19 December 2017. In my view, for the second suitability report to carry any relevance in Mr P's decision making, it should've been sent to him before the pension transfer was completed. Sending it to him several months after the event rendered it irrelevant. This is because Mr P's decision to transfer was based on the advice and suitability report given to him by Niche in November 2017 before the transaction was completed. So, for the purposes of making a decision on this complaint, I've decided to disregard the content in the second suitability report issued in May 2018 since it had no bearing on Mr P's decision to transfer.

In responding to this complaint, Niche stated it had made Mr P aware of the risks associated with the pension transfer including that he would likely be financially worse off. But that he wanted to access his safeguarded benefits in a different format than that provided by the BSPS and so, in his circumstances, the critical yield was irrelevant. It said that its cashflow modelling showed the PPP could meet Mr P's income needs from age 57. It also said that a key factor underpinning its advice was the fact that Mr P had stated he had no plans to marry his partner, meaning the spouse's pension available under the BSPS2 wasn't relevant and so he preferred the flexible benefits offered by a PPP. In addition, he didn't trust Tata Steel's intentions and considered that the transfer value offered was too good to turn down. It said that it was satisfied that its advice met Mr P's objectives.

I recognise that Mr P's safeguarded benefits was ultimately his money to do with as he saw fit. However, he was relying on Niche to provide expert, balanced information and advice, taking into account all the information available to it at that time – so that he could then make an informed decision. I understand that there will be instances where a client seeks financial advice with preconceived notions or concerns about the financial health of an employer or DB pension scheme but, as the professional party, Niche was tasked with rationally addressing those concerns and providing an appropriately balanced view of the available options.

In my view, disclosure of risks isn't the same as suitability. In other words, just because Niche told Mr P that he'd likely be financially worse off and disclosed other risks, doesn't absolve it from any responsibility for the suitability of the transaction. In my view, financial planning isn't simply about wish fulfilment and facilitating whatever course of action a client wishes to take. If an advising business considers a course of action to be unsuitable for their client, or otherwise not in their best interests, it has a choice not to facilitate the transaction.

Transfer value analysis

One of the key components in determining the suitability of a pension transfer is assessing the financial viability of the proposed transaction. The transfer value analysis system ("TVAS") rules applied at the time Niche advised Mr P. This required it to carry out a transfer value analysis to calculate the 'critical yield' applicable to the proposed transfer. The critical yield is the annual rate of investment return required on the invested transfer value, after charges, to match the capitalised value of the benefits offered by the DB pension scheme on the assumption that the value of the alternative pension is used to secure a lifetime annuity at the scheme normal retirement age – the higher the critical yield, the less likely that the alternative pension will achieve sufficient investment growth to match the revalued pension payable by the DB pension scheme.

In its suitability report issued in November 2017, Niche quoted the following critical yield figures to Mr P:

Scheme	At age 65 based on taking a full pension
BSPS	5.96%
PPF	4.37%

The critical yield figures for the BSPS2 weren't calculated. But it was known at the time Niche advised Mr P that the BSPS2 would pay a higher level of benefits than the PPF but lower than the BSPS, so the critical yield figure for the BSPS2 at age 65 likely fell somewhere in between the figures above.

Generally speaking, the critical yield figure is higher at younger ages due to the impact of initial charges and because the invested transfer value has less time to increase in value compared to taking benefits at age 65. So the critical yield figures at age 57, to align with Mr P's early retirement objective, would've likely been higher than those stated above. Given that one of the reasons why Mr P wanted to transfer was because he wanted to flexibly access benefits at age 57, I would've expected Niche to have stated the figures applicable at that age in its suitability report. But it didn't. So I'm not persuaded that the comparison and figures stated in the suitability report included enough information for Mr P to enable him to make an informed decision.

Niche's recommendation to Mr P was provided to him after the FCA gave instructions in its *'Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers'* 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 on our website. While 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've been considered reasonably achievable when the advice was given in this case. The closest discount rate which I'm able to refer to and published by this service for the period before October 2017 is 4.6% based on Mr P taking benefits at the scheme normal retirement age of 65 and 4.4% based on taking benefits at age 57. Furthermore, the FCA's projection rate for pensions at the time was 8%

per year for the upper rate, 5% per year for the middle rate and 2% per year for the lower rate.

In my view, the discount rate and FCA projection rates indicate that Mr P would need to accept a higher risk investment approach to provide the potential for the sort of investment returns required over the investment timeframe to age 65 to exceed the figure of 5.96%. But that would only come with accepting the risk of significant investment loss. This is because the relationship between risk and reward is closely related.

I note that Mr P was recorded as having a '*Cautious Balanced'* risk profile. He had very limited investment knowledge and experience before the pension transfer. At the time of Niche's advice, Mr P didn't have any other savings or investments other than his Tata Steel DC plan that started earlier in 2017 and was then valued at about £2,000. There's no evidence that Mr P had experience of controlling and investing significant sums of money. Given the critical yield applicable in this case, I think that there was limited scope for the PPP to provide benefits that matched the relinquished benefits, let alone exceed them. And it seems that Niche agrees because in its suitability report it stated that it thought Mr P would likely be financially worse off in retirement based on the critical yield figure of 5.96%.

Of course, financial viability isn't the only consideration when giving pension transfer advice, as was set out in COBS 19.1.7B (G). A reasonable prospect of the critical yield being met or exceeded wouldn't necessarily mean that the transfer was suitable, and conversely, there might be other considerations which mean a pension transfer is suitable, despite providing overall lower benefits. I'll now go on to consider this.

Death benefits objective

It was recorded that Mr P wanted to change the format of death benefits, mainly due to his single status and that his partner wouldn't be provided for under the BSPS. 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 recommended PPP offered flexible death benefits. Based on the applicable tax rules, if death occurred under 75 the benefits are paid free of income tax – after 75 the benefits are taxed at the beneficiary's marginal rate of income tax. It's fair to say that immediately following the transfer to the PPP and for the period until Mr P could draw any benefits from 55 onwards, the death benefits available would be significant (subject to investment performance) due to the simple fact he couldn't access and deplete the fund value for at least 16 years.

But Mr P was recorded as being in good health. So he could expect life expectancy into his 80s. There weren't any immediate health concerns that indicated a pension transfer was a suitable course of action at that time.

The value of Mr P's safeguarded benefits would represent a significant proportion of his retirement provision by the time he came to retire. And so he'd likely start using this money to meet his income and lump sum needs as soon as he retired. Withdrawing money from the PPP to meet his income and lump sum needs from age 57 would likely mean that the size of the fund remaining in later years – when death is more likely – could be much smaller than expected.

If it was a genuine objective for Mr P to provide a lump sum to his partner and children on his death, then life cover could've achieved the same objective of providing a lump sum while enabling him to maintain safeguarded benefits in the BSPS2. I note that Mr P had disposable income available every month after paying his bills which he could've used to pay

for life cover to achieve the death lump sum objective. Pure life cover for a defined term is generally cheap and some cover may have been affordable for Mr P given he was aged 39 and recorded as being in good health. And if put in trust the policy proceeds would fall outside Mr P's estate for inheritance tax purposes, similar to a PPP. However, I cannot see evidence that Niche adequately investigated the life cover option. For example, I haven't seen evidence that it quantified Mr P's death lump sum need, over what term, how this might change over time, how it might be met by other means or present personalised life cover quotes to him to enable him to make an informed decision.

But, in any case, I note that through his employment, Mr P had life cover based on a multiple of four times' his salary, meaning a lump sum of about £168,000 would be paid in the event he died while still employed by Tata Steel – this was payable regardless of whether his safeguarded benefits were transferred to BSPS2, PPF or a PPP. In addition, the value of his Tata Steel DC pension plan would be paid as a lump sum to his nominated beneficiary(ies). So it seems to me that in the immediate future, certainly while Mr P remained employed by Tata Steel, that a lump sum of at least £168,000 would be paid on his death. As noted above, it seems that Mr P intended to remain employed by Tata Steel for the foreseeable future.

So I think it's fair to say that there wasn't any immediate need to transfer at that time to provide death benefits in a different format bearing in mind the cover already in place while Mr P remained employed by Tata Steel. With no immediate health concerns, this existing cover enabled Niche and Mr P enough time to properly investigate obtaining additional life cover so that he could maintain safeguarded benefits in the BSPS2.

It's my view that Mr P had no health issues at the time Niche advised him which might reasonably have prompted him to relinquish the guarantees attached to his own retirement income for the sake of an enhanced safety net for his partner and children. So I'm not convinced there was any real merit in Mr P transferring to a PPP at that time to provide a lump sum death benefit.

Flexibility and early retirement objectives

It was recorded that Mr P wanted to retire at age 57. It doesn't appear that his desired level of income in retirement from that age was recorded. However, it was recorded that he expected his total monthly expenditure in retirement to be £1,225 (or £14,700 per year).

In its suitability report, Niche recorded that it recommended the pension transfer to a PPP to enable Mr P to flexibly access his safeguarded benefits. It was noted that his main focus was the ability to flexibly access his pension in retirement allowing for any changes in circumstances in the future with a view to utilising his funds while he was young and able.

I think it's clear that Mr P was attracted to a flexible arrangement. But I'm not convinced, based on the evidence provided, that it was evident at age 39 he had a genuine need to access his safeguarded benefits flexibly with varying levels of income and lump sums during retirement.

Mr P was 39 at the time and so more than 17 years away from his preferred retirement age of 57. While I don't doubt he would've liked the flexibility to draw any level of benefit he wanted, plans can change over such a long period of time. An important point here is the fact that Mr P couldn't access the money in the PPP until age 55 at the earliest. So I don't think there was any pressing need to transfer his safeguarded benefits at that time, especially given the high critical yield attached to the transaction.

Niche portrayed the PPP option in the suitability report as allowing for early retirement at age 57 without the "penalties" which would be applied to the PPF or BSPS2 options. The reality was of course that the PPP would've had less time to grow if accessed at 57 and any resulting income would need to last longer. I cannot see that this was adequately explained to Mr P so that he could understand accessing any of the available options at age 57 would likely lead to reduced retirement income during his lifetime compared to taking benefits at age 65.

I think it would've been very difficult at age 39 to determine with any reasonable degree of certainty whether Mr P would be able to retire at age 57. This leads me to conclude that there wasn't any compelling reason to transfer at that time in light of the critical yield figure. But if I assume it was a realistic objective, it's my view that he could've achieved this by opting for the BSPS2 and drawing the scheme pension at 65 without penalty. I'll explain why.

I note that Mr P was an active member of the Tata Steel DC pension scheme which, at the time of Niche's advice, was valued at about £2,000. Mr P and Tata Steel were, in total, contributing 16% of his gross annual salary of £42,000 into his DC pension plan every year, which was about £6,700 in monetary terms. This would increase in line with increases in his salary. It was noted that Mr P intended to continue working in the steel industry until retirement. So I think it's fair to say that, at that time, he would continue to be employed by Tata Steel for the foreseeable future. And in the event Mr P left that employment, I think it's likely that he'd find alternative employment and, with the legal requirements of auto-enrolment, would join a different DC pension scheme and pay a minimum of 8% of his earnings into it.

So over the 18-year period to age 57, it's likely that Mr P would build up significant DC pension savings. Indeed, Niche's own cashflow analysis indicated that the value of Mr P's DC plan would be well in excess of £200,000 by age 57. Given that Niche was relying on the value of the DC pension savings to underpin it's recommendation, I think it's fair that I take these into account in deciding this complaint. It's my view that access to that level of DC pension savings would've met Mr P's expected his total monthly expenditure in retirement to be £1,225 (or £14,700 per year) for the first several years of retirement.

So if Mr P did have a genuine need for flexible benefits from age 57, this could've been met in the first instance by using his likely significant DC pension savings. This course of action would've enabled Mr P to achieve his income and lump sum needs for the eight-year period from age 57 until he could take unreduced benefits from the BSPS2 at 65. The estimated revalued annual scheme pension payable by the BSPS was £22,542 at age 65. I recognise that the level of income payable by the BSPS2 at age 65 would be lower than £22,542 but, with the option of a tax-free lump sum, it's likely the benefits provided would've covered his expected expenditure until his full state pension started at age 68. So, from 65 onwards, it seems most of Mr P's core retirement income needs could've been met by guaranteed and escalating pensions which would've offered some inflation protection unlike the recommended PPP.

And if it turned out the DC pension savings didn't provide adequate income for the *full* eight-year period between 57 and 65, Mr P could've taken his benefits from BSPS2 at some point in between, meaning the early retirement factor wouldn't be as great as at age 57. Alternatively, he could've considered a transfer to a PPP at that time when his retirement income and lump sum needs could be determined with far greater accuracy than at 39.

Transferring to the PPP led to the investment, inflation and longevity risks associated with providing the retirement benefits moving from the DB pension scheme to Mr P. But I don't think he needed to take on these risks at that time for the reasons explained above.

The course of action recommended by Niche led to Mr P concentrating most of his retirement benefits on a DC basis which offered no guarantees but was based entirely on investment performance. The alternative, blended approach I've suggested likely would've enabled Mr P to achieve the same objectives but with significantly less risk. I haven't seen evidence that Niche adequately considered and discounted this alternative course of action in meeting Mr P's flexible and early retirement objective.

The available evidence simply doesn't support the position as to why flexibility would've been a sufficiently compelling reason for Mr P to relinquish valuable benefit guarantees at that time.

In conclusion, while I understand Mr P's reasons and motivations for flexible benefits and early retirement, I don't think Niche clearly demonstrated why it was in his best interests to relinquish his safeguarded benefits at that time to achieve future flexibility. I simply don't agree the perceived advantage of flexibility and control of income outweighed the guaranteed benefits offered by the BSPS2.

Mr P's concerns about the security of his benefits and the PPF

Given the level of uncertainty surrounding the BSPS at the time, I can understand that Mr P was concerned about the financial security of his safeguarded benefits and so wanted to have control over these by transferring them away to a PPP.

It was noted in the suitability report that Mr P was concerned about the value of his safeguarded benefits being reduced. It was noted, *"You therefore see the benefits of the current scheme as less appealing, and you are afraid that they may be further reduced in the future if your benefits enter the RAA and PPF. Following the controversy surrounding the British Steel pension scheme, you have expressed to me that you no longer have faith in the Trustees of the British Steel pension scheme, as they have made several disadvantageous changes to the scheme. You would therefore like to have more control over your pension; how it is invested, and when and how much of an income you may withdraw. You feel that there is a potential that even the newly arranged BSPS 2 pension may still fall into the Pension Protection Fund and therefore significantly reduce the flexibility of when you can access the pension in addition to the reduction in benefits".*

The PPF was introduced by the government in 2005 as a 'lifeboat' scheme to protect members of DB pension schemes with the promise of providing a minimum level of benefits. The revaluation and escalation rates are set by law. Depending on his age on transfer to the PPF, Mr P could expect to receive a minimum of 90% of his scheme pension, although this would be affected by the revaluation and escalation rates under the PPF. This contrasted with the recommended PPP where there's no promise of a minimum level of benefits payable. At the time of Niche's recommendation, the PPF's financial position remained robust. So there wasn't any reason at that time to question the financial viability of the PPF to provide benefits in the future.

Had Niche advised Mr P to transfer to the BSPS2 he would've maintained safeguarded benefits and retained the option to transfer to a PPP at a later date, if then deemed suitable, when he could immediately access benefits and, crucially, determine his retirement income and lump sum needs with far greater accuracy than at 39. I think this is a key point.

A transfer to the BSPS2 would've also removed any immediate concerns Mr P had about the PPF. After all, the whole reason the BSPS2 was conceived was to provide a new long-term DB pension scheme for former members of the BSPS. And if it was the case, in the future, that the BSPS2 was at risk of being transferred to the PPF, then I think it likely that, similarly to the BSPS, members would be given the opportunity to transfer out to a PPP before any

transfer to the PPF occurred. So I don't think that there was any immediate concern about options disappearing for Mr P or that there was an urgency to transfer to a PPP at that time to avoid a transfer to the PPF. In my view, Mr P was reliant on Niche to provide a fair and balanced assessment of the BSPS2 and PPF and to act in his best interests in this regard. This ought to have involved discussing with Mr P the features, risks and benefits of those alternative options and allaying his misapprehensions.

If Mr P was concerned about his safeguarded benefits being transferred to the PPF which would result in him losing 10% of his scheme pension, then I question why he would accept the risk of transferring to a PPP which exposed him to unlimited downside risks where the loss could be significantly greater than 10%. This simply doesn't make sense to me and suggests that he didn't have the knowledge and experience to understand the features, risks and benefits of the PPF compared to the pension transfer. He was relying on Niche to provide expert advice on this point, but I think it failed to do this because the suitability report doesn't deal with Mr P's concerns about the PPF. So he likely thought a transfer to the PPF was an outcome to avoid at all costs and probably reinforced his view that a transfer to a PPP was the best course of action.

In summary, I think that Niche failed to adequately allay Mr P's misapprehensions and that he therefore made the decision to transfer to the PPP from an uninformed position regarding the PPF.

If properly informed, would Mr P have transferred anyway?

I'm not persuaded that a pension transfer was in Mr P's best interests. So I don't think its recommendation could therefore be regarded as suitable in the circumstances. As a result, I think it's fair and reasonable to uphold this complaint.

In potential mitigation of Niche's advice, I've also thought about whether Mr P, if placed in a fully informed position, would nevertheless have decided to transfer the value of his safeguarded benefits to a PPP. This was a complex transaction involving many factors which Mr P, as a layperson, wouldn't have been familiar. It's my view, given his lack of investment knowledge and experience, that he was heavily reliant on Niche, as the professional party in the transaction, to take those factors into account and provide suitable, balanced advice. Given Mr P's reliance on Niche to provide expert advice, I think it's unlikely, on balance, he would've transferred against its advice had it advised him to opt for the BSPS2.

Putting things right

A fair and reasonable outcome would be for Niche to put Mr P, as far as possible, into the position he would now be in but for the unsuitable advice he was given. My view is aligned with that of our investigator in that, had Mr P been properly advised, he would've opted for the BSPS2 rather than the PPF. I'll explain why.

There were differences between the BSPS2 and PPF. These differences meant that the PPF was likely the better option for unmarried, deferred members who expected to retire early or take the maximum tax-free cash available even allowing for the 10% reduction in the starting entitlement. But the BSPS2 was likely the better option for married pensioners and deferred members who expected to draw benefits at or close to the scheme normal retirement age of 65. For the reasons set out above, I think it's likely that, properly advised, Mr P would've envisaged accessing his DC pension savings in the first instance to meet any flexible income and lump sum needs before starting to take his safeguarded benefits at 65. In terms of death benefits, I recognise that the spouse's pension offered by the BPSP2 may not have been seen as relevant by Mr P given that he stated he had no plans to marry. But I don't think his

marital status meant he should've relinquished the valuable guaranteed and income provided by the BSPS2 at age 65. And so it's the benefits offered by the BSPS2 which should be used for comparison purposes.

As such, the calculation on the basis of entering the BSPS2 should be carried out using the most recent financial assumptions at the date of the actual calculation. This should be on the basis Mr P takes benefits at the scheme normal retirement age of 65.

FCA consultation

On 2 August 2022, the FCA launched a consultation on new DB pension 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 stated that it considers the current redress methodology in Finalised Guidance (FG) 17/9 remains appropriate and fundamental changes aren't necessary. However, its review identified some areas where it 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 stated that it expects firms to continue to calculate and offer compensation to their customers using the existing guidance in FG 17/9 while the consultation takes place. But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with any new rules and guidance that may come into force after the consultation has concluded.

We've previously asked Mr P whether he preferred any redress to be calculated now in line with current guidance or wait for the any new guidance and 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'm satisfied that a calculation in line with FG17/9 remains appropriate and, if a loss is identified, will provide fair redress for Mr P.

Niche must therefore undertake a redress calculation in line with the FCA's pension review guidance as updated by it in its *'Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers'*. This calculation should be carried out as at the date of this final decision and using the most recent financial assumptions. In accordance with the FCA's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr P's acceptance of this final decision.

Niche may wish to contact the Department for Work and Pensions ("DWP") to obtain Mr P'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 BSPS on Mr P's SERPS/S2P entitlement.

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

If a payment into the PPP isn't possible or has protection or allowance implications, it should be paid directly to Mr P 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've been taken as tax-free cash and 75% would've been taxed according to his likely income tax rate in retirement – presumed to be 20%, as previously stated by our investigator. So making a notional deduction of 15% overall from the loss adequately reflects this.

If this 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.

In addition, Niche should pay Mr P £300 for the distress and inconvenience this matter has caused him.

The compensation amount must, where possible, be paid to Mr P within 90 days of the date Niche receives notification of his acceptance of this final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of this final decision to the date of settlement for any time, in excess of 90 days, that it takes Niche to pay Mr P.

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. 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 P the compensation amount as set out in the steps above, up to a maximum of £160,000. Where the compensation amount doesn't exceed £160,000, I would additionally require Niche Independent Financial Advisers Limited to pay Mr P 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 P 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 P the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr P. If Mr P accepts this final decision, the money award becomes binding on Niche Independent Financial Advisers Limited. My recommendation wouldn't be binding. Further, it's unlikely that Mr P can accept this final decision and go to court to ask for the balance. Mr P may want to consider getting independent legal advice before deciding whether to accept this final decision.

Niche must provide to the Representative a breakdown of the loss assessment in a simple, easily understandable format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 15 February 2023.
Clint Penfold
Ombudsman