DRN-3783462

The complaint

Mr E complains Niche Independent Financial Advisers Limited (Niche) gave him unsuitable advice to transfer the benefits from his defined benefits (DB) scheme with British Steel (BSPS) to a personal pension. He says this caused him a financial loss.

What happened

In March 2016, Mr E's employer announced that it would be examining options to restructure its business, including decoupling the BSPS from the company. The consultation with members referred to possible outcomes regarding their preserved benefits, which included transferring the scheme to the Pension Protection Fund (PPF), or a new defined benefit scheme (BSPS2). Alternatively, members were informed they could transfer their benefits to a personal pension arrangement.

Mr E was concerned about what the announcement by his employer meant for the security of his preserved benefits in the BSPS. He wasn't sure what to do and so, based on what he'd heard from colleagues, he contacted independent financial adviser Niche. Mr E met with Niche in 2017 and it gathered information about his circumstances and objectives.

In October 2017, members of the BSPS were sent a "Time to Choose" letter which gave them the options to either stay in BSPS and move with it to the PPF, move to the BSPS2 or transfer their BSPS benefits elsewhere. The deadline to make their choice was 11 December 2017, and was later extended to 22 December 2017.

In November 2017 Niche advised Mr E to transfer his BSPS to a personal pension. It said this would allow Mr E to achieve his objectives of control and flexibility of income, having the option to retire and drawdown income at age 55, and better death benefits for his wife and children. Mr E accepted this advice, so £375,872.66 was transferred from the BSPS to his new personal pension.

In 2022 Mr E complained to our Service that Niche's advice was unsuitable and had caused him a financial loss. Our Service passed his complaint to Niche. In its response to Mr E's complaint, Niche essentially said it had undertaken a full financial advice process with Mr E, considered all his available options and explained the risks and benefits to him.

Unhappy with Niche's response, Mr E asked our Service to investigate. He told us he'd only thought to retire earlier after Niche advised he could retire at about age 55 or 57 with a fund of approximately £750,000. And Niche had suggested he could drawdown his pension funds flexibly. Mr E said Niche led him into his objectives, and should have advised him to transfer into the BSPS2 instead. Mr E was now age 49 - he said he'd not retired yet and it depended on his pension fund, and he might need to keep working past age 60.

Niche provided our Service with documents from the time of the advice.

This complaint came to me for consideration. On 6 September 2022 I issued my provisional decision. In summary, I said I appreciated Mr E was motivated to transfer out of the BSPS, and that having control and flexibility of income, the option to retire and drawdown income at age 55, and potential for higher death benefits on offer through a personal pension would have sounded attractive to Mr E. But Niche wasn't there to simply arrange what Mr E might have thought he wanted – it was instead obliged to give him an objective picture and to recommend what was in his best interests.

I said Niche's advice to transfer was unsuitable. Because it meant Mr E was giving up a guaranteed, risk-free and increasing income, and was very likely to obtain lower retirement benefits. And there were no reasons which would justify a transfer and outweigh this - Mr E shouldn't have been advised to transfer out of the scheme based on an insubstantial wish to retire at 55 and have control and flexibility of income. And the potential for higher death benefits wasn't worth giving up the guarantees associated with his DB scheme. I said Niche should have advised Mr E to opt into the BSPS2, given his particular circumstances and lack of certain retirement plans, and the more advantageous annual indexation of his pension when in payment under the BSPS2. I thought Niche should compensate Mr E for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology, and using the benefits available to Mr E through the BSPS2 at age 65 for comparison purposes.

Mr E said he had no further comments or evidence to provide. Niche said it intended to respond to my provisional decision and our Service gave Niche further time to do so. However, Niche didn't provide anything further.

Our Service then contacted Mr E and Niche to explain that Mr E could choose to have any redress calculated now in line with the regulator's current guidance in FG 17/9, or could instead choose to wait for any new guidance/rules to be published by the regulator as expected in early 2023. Our Service gave both Mr E and Niche additional time to respond about this if they wanted to. Mr E had some questions, and our Service directed him to the regulator's guidance. But ultimately, neither Mr E or Niche responded further about this.

I'm now in a position to make my 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 the same reasons I set out in my provisional decision.

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

Financial viability

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 E was 44 at the time of the advice. Niche's suitability report says Mr E was in good health and wanted the option to retire at age 55 if possible and enjoy his funds while he had his health. It said the BSPS had a protected retirement age of 50 and transferring out of the BSPS would mean Mr E lost this benefit. But that Mr E had ruled out taking early retirement within the BSPS because of the early retirement reductions that would apply before the BSPS normal retirement age of 65.

Niche may argue its advice was suitable at the time because Mr E was taking advantage of a generous CETV he might not have been able to benefit from again. It may be that the CETV was generous at that time. Nonetheless, the suitability report said the investment return required to match Mr E's current pension (critical yield) was 5.87% per annum. It said this was based on a CETV of £364,002.99. I note the suitability report had earlier said the CETV was £375,872.66 and this higher CETV is also used in Niche's pension transfer report. The pension transfer report said a CETV of £375,872.66 gave a critical yield of 11.48% for age 55 and 5.87% at age 65. And it said that if Mr E's DB scheme moved to the PPF, the critical yield required to achieve the same level of benefits was 3.63% at 65 and 5.86% at 55.

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 4.5% a year for 20 years to retirement and 3.8% a year for 10 years to retirement. For further comparison, the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2% a year.

I've taken this into account, along with Mr E's 'moderately cautious' attitude to risk and also the term to retirement. If Mr E transferred out of the scheme it was possible he could've matched the benefits available to him under the PPF if he retired at age 65. But, even if the CETV was perhaps generous at that particular time, there would be little point in Mr E giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme. And given Mr E's wish to retire at 60, or at 55 if possible, and the applicable critical yields being higher than both the discount rate and the regulator's middle projection rate, I think he was likely to receive benefits of a substantially lower overall value than the DB scheme at retirement, as a result of investing in line with his moderately cautious attitude to risk.

It appears Niche accepted this. The suitability report said, *"Therefore, based on this, and making a comparison on a like for like basis, my advice would be not to transfer the pension as you are likely to be worse off in retirement."* But it went on to say *"However, as you have advised me that you wish to use your pension in an entirely different manner, to that set out by the rules of the [BSPS], I would be happy to give you a positive recommendation to transfer the pension for the following reasons:"* These reasons were related to Mr E's other objectives as recorded in the suitability report, which I'll return to later.

It's important to note that advice has to be clear and not misleading. Niche may argue its advice was clear and not misleading. But I note the suitability report implied Niche didn't think Mr E should go ahead with the transfer despite still advising him to do so. Regardless of the warnings Niche set out in the suitability report, Niche advised Mr E to transfer his pension even though this would leave him worse off in retirement in pure financial terms.

And while Mr E might have expressed a wish to retire at age 55, I don't think this was his certain plan. I say that because the suitability report and the other documents Niche prepared at the time of the advice don't record any material reason for him to retire at age 55. And the data capture form actually said Mr E wanted to retire at 60. Also, I think most people would express a desire to retire early if asked. However, it was Niche's role to determine whether that was feasible or whether it was in Mr E's best interest.

If Mr E did genuinely intend to retire at age 55 then I think Niche's advice ought to have been not to transfer out of the BSPS. This is because the critical yield increased to 11.48% if he retired at that age, and given Mr E's attitude to risk, that was very unlikely to be achieved. Moreover though, Mr E was 44 at the time of the advice, so he still had many years to think about his retirement plans. Therefore, I don't think he needed to make a decision to transfer out of the BSPS at that time, particularly when the BSPS2 provided him with a similar level of benefits and he'd still have the option of transferring out of that scheme nearer to his desired retirement age if he needed to. Overall, I don't think Mr E should've been encouraged to make an irreversible decision that would undoubtedly leave him worse off in retirement.

I should say here that the critical yield figures I've referred to above are based on the existing scheme benefits. But remaining in the scheme wasn't an option; Mr E had to choose to opt into the BSPS2, move with the existing scheme to the PPF or transfer to a personal arrangement. By the time the advice was given, the details of the BSPS2 were known. So, the critical yields applicable to the BSPS2 benefits should've formed the basis of the advice so Mr E was able to make an informed decision. I note that Niche did produce another analysis based on the BSPS2 benefits in a pension transfer report dated 12 December 2017 (after the advice was given). Although the critical yields applicable to the BSPS2 benefits are lower, they are not substantially lower such that it would've made the transfer financially viable. Mr E was still unlikely to match, let alone exceed, the BSPS2 benefits at age 55 or 65. So, it doesn't make a difference to my findings here.

I've considered the cash flow forecasts produced by Niche, which Niche says shows that Mr E could meet his income needs if he transferred out of the DB scheme and would still have a pension fund worth £275,300 at age 100. However, I can see the cash flow forecasts are based on Mr E retiring at either age 60 or age 65, whereas Niche's critical yield and suitability report was based on Mr E retiring at either age 55 or age 65.

And the sum left remaining at age 100 is only achieved by Mr E taking much less income than he would be entitled to through the BSPS from his personal pension from age 65. In fact the cash flow forecast shows Mr E withdrawing no income between age 60 and 66. So, I'm not necessarily persuaded that Mr E understood that he'd need to take substantially less income from his personal pension and rely on his state pension to make his funds last. The cash flow forecast is also based on net investment returns of 4% per year, meaning it would need to be higher to cover the associated fees. And given Mr E's moderately cautious attitude to risk I'm not necessarily persuaded that such a return over such a long time is feasible.

In summary, if Mr E had transferred to a personal pension he may well have been able to match the benefits provided by the PPF if he retired at age 65 (the PPF critical yield at this age was 3.63%). But given Mr E told Niche he wished to retire at age 60 or age 55 if possible, he was likely to be worse off by transferring to a personal pension. So based on the above alone, this transfer wasn't in Mr E's best interest.

But financial viability isn't the only consideration when giving transfer advice. Other objectives might mean a transfer is suitable despite providing overall lower benefits. And Niche may argue its advice was given on the basis of achieving Mr E's specific personal objectives. So I've thought about whether Mr E's other objectives meant a transfer was still suitable, which I'll now address.

Flexibility and income needs

The suitability report said one of Mr E's objectives was having control and flexibility over his pension, including the option to draw funds while he had his health and from age 55.

Before making its recommendations, Niche completed a fact find and a data capture for Mr E and his wife, to understand their circumstances. In terms of their assets, it recorded Mr E's annual income was £38,971 and his wife's monthly income was £2,200. That Mr E had £1,000 in savings, and another pension worth £500. Niche didn't record that Mr E had any life or other insurance protection.

For liabilities, Niche recorded that Mr E repaid £129 each month for a loan. And that Mr E and his wife's property was valued at £300,000, with an outstanding mortgage of £160,000 for which they repaid £900 each month - the fact find said the remaining mortgage term was 18 years.

Niche recorded that Mr E and his wife had a household monthly income of £4,400 and monthly expenditure of £4,243. Therefore they had £157 disposable income each month and there's nothing to suggest financial difficulties here or that their mortgage, their largest debt, was unaffordable at that time or was at risk of not being repaid.

Mr E may have liked the idea of being able to draw down income as and when he wanted or needed from age 55. But the documents from the time of the sale that Niche has provided don't record any material need for Mr E to do so. And in fact, the cash flow forecast was predicated on him working to age 60 and not taking any benefits until age 65. Therefore, I don't think there was any material reason for Mr E to give up a secure, guaranteed, escalating pension income in retirement for this reason.

I still think retiring and having the option to draw funds at age 55 was aspirational for Mr E, and not his certain plan. But even if I thought it was Mr E's certain plan, which I don't, I think this was achievable under the BSPS2. I say that because Niche's suitability report says that under the BSPS, Mr E had a protected retirement age of 50 and could take TFC of £80,802 at age 55. And although not mentioned in the suitability report, Mr E was also able to take benefits at age 55 under the BSPS2.

Niche's data capture for Mr E and his wife says their post retirement expenses totalled £2,893 per month, so just under £35,000 a year. But as well as essential expenses, this also included a total of £18,000 a year of what I think it's fair to say were discretionary expenses that Mr E and his wife could choose whether to spend or not – this discretionary spending is categorised in the data capture as 'general', 'clothing', 'holidays', 'savings', 'socialising/entertainment', 'meals out/takeaways'. There were also unspecified general 'loan' repayments of £500 per month and loans costs associated with a hire purchase and a caravan that I'm not necessarily persuaded would've continued into retirement.

Niche's suitability report says the BSPS would give Mr E an annual income of £17,139 per year from age 55 if he didn't take TFC. But again, these benefits were no longer on offer. So, Niche ought to have referred to the benefits available through the BSPS2 and the PPF. Under the BSPS2, Mr E could take an annual pension of £13,385 at age 55 or £21,756 at age 65. Even if it had it been Mr E's certain plan to retire and have a pension income at age 55, I think his BSPS benefits would have provided sufficient income to meet his essential expenses. Mr E would also have additional income from his other pension. Niche's fact find says this was worth £500 at the time of the advice, and Niche's cash flow forecast says Mr E contributed 6% per year to this, with his employer contributing 10% per year. Based on this, I think it's reasonable to conclude Mr E's other pension would be worth at least about £60,000 by the time he was aged 55. Mr E could take 25% of this as TFC and could've drawn down further sums if he needed extra income. There are also no details of Mrs E's pension provisions, that could've also been used to meet any shortfall.

So, I don't think Niche should have advised Mr E to transfer out of the BSPS to have control and flexibility that he didn't really need. Mr E's desire to access his pension didn't outweigh Niche's responsibility to provide him with suitable advice and act in his best interest. And even if Mr E did in fact have certain plans to retire at 55 (which I don't think he did), I think he could've met his objectives by opting into the BSPS2 and supplementing his income with his other pension.

Death benefits

Niche recorded another of Mr E's objectives as having better death benefits for his wife and children. The suitability report said this included his wife benefitting from his residual pension in its entirety instead of the 50% spouse's pension under the BSPS. And his children being provided for should anything happen to Mr E and his wife.

Death benefits are an emotive subject and of course most people would like their loved ones to be taken care of when they die. And I'm sure that the idea of leaving a large sum to his family in the event of his death sounded attractive to Mr E, as it would to most people. But whilst I appreciate death benefits are important to consumers, and Mr E might have thought it was a good idea to transfer his BSPS benefits because of this, the priority here was to advise Mr E about what was best for his retirement provisions.

It's important to note that a pension is primarily designed to provide income in retirement. So I don't think the potential for greater death benefits should have been prioritised over this. I say potential, because the sum left on Mr E's death was dependent on investment returns. And if Mr E lived a long life or investment returns were poor, there may not have been a large sum to pass on. I don't think Niche gave enough importance to the death benefits Mr E already had with his existing pension – his wife would have received a guaranteed, escalating spouse's pension for life, which would have been valuable if Mr E predeceased her.

And if Mr E had wanted to leave a legacy for his children, or to leave more to his wife, which didn't depend on investment returns or how much of his pension fund remained on his death, then I think Niche should have instead explored life insurance more fully.

The suitability report says Mr E was in good health. And the documents Niche has provided include quotations for Mr E regarding whole of life insurance. The suitability report doesn't mention life insurance, but it seems likely this was discounted by Mr E because of the cost (between £42.80 and £406.85 per month before underwriting). But I don't think that this was a balanced way of presenting this option to Mr E.

Niche based the quote on the transfer value of Mr E's pension benefits, so it essentially assumed that he would pass away on day one following the transfer. That isn't realistic. Ultimately, Mr E wanted to leave whatever remained of his pension to his spouse or children, which would be a lot less than this if he lived a long life. So, Niche should have asked Mr E how much he would ideally like to leave to his children and/or wife, and how much he could afford to contribute. Insurance on this basis was likely to be a lot cheaper to provide and would have enabled him to leave a legacy without risking his retirement income.

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

Concerns about financial stability of BSPS

Niche's fact find said Mr E wanted to review his options and make a decision before his pension fell into the PPF, and that he'd lost trust in his employer. Niche's suitability report said Mr E had lost faith in the BSPS. Niche may argue this meant Mr E very much wanted to transfer away from the BSPS, and that it discussed the PPF option with Mr E.

I accept that when Mr E met with Niche, he was concerned about his pension and it's possible Mr E was inclined to transfer out of the BSPS because of these concerns. However, it was Niche's obligation to give Mr E an objective picture and recommend what was in his best interest. Mr E was concerned about the BSPS moving to the PPF. But as I've said above, if Mr E transferred his DB scheme he wasn't likely to be able to match or improve on the benefits he'd be entitled to if the scheme entered the PPF, particularly if he retired early.

So, I think Niche ought to have reassured Mr E that the possibility of his scheme moving to the PPF wasn't as concerning as he thought. Furthermore, the scheme moving to the PPF was only one of the outcomes; by the time Mr E sought advice, the details of the BSPS2 would've been known and he had been given the choice to opt into the scheme. So, Mr E being able to join the BSPS2 should've allayed his fears about the PPF. And Niche should've reassured him that he could meet his retirement objectives in either scheme regardless.

Summary

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

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

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

Given Mr E was age 44 at the time of the advice and didn't have certain plans to retire at age 55, 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 early retirement. Also, Mr E was married, and his wife's pension would be set at 50% of his pension at the date of death, and this would be calculated as if no lump sum was taken at retirement (if Mr E chose to do so). The annual indexation of his pension when in payment was also more advantageous under the BSPS2. So, I think Niche should've instead advised Mr E to opt into the BSPS2.

So, overall, I think Niche should compensate Mr E 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 at age 65 that should be used for comparison purposes.

Putting things right

A fair and reasonable outcome would be for the business to put Mr E, as far as possible, into the position he would now be in but for Niche's unsuitable advice. I consider Mr E would have most likely opted to join the BSPS2, rather than transfer to the personal pension if he'd been given suitable advice. So, Niche should use the benefits offered by the BSPS2 for comparison purposes.

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 - CP22/15-calculating redress for non-compliant pension transfer advice. The consultation closed on 27 September 2022 with any changes expected to be implemented in early 2023.

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.

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

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

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

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

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

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr E'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 E 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 E 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 E.

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

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

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

Where I uphold a complaint, I can award fair compensation of up to £170,000, 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 £170,000, 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 E the compensation amount as set out in the steps above, up to a maximum of £170,000.

Where the compensation amount does not exceed £170,000, I additionally require Niche Independent Financial Advisers Limited to pay Mr E any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £170,000, I would only require Niche Independent Financial Advisers Limited to pay Mr E any interest as set out above on the sum of £170,000.

<u>Recommendation:</u> If the compensation amount exceeds £170,000, I also recommend that Niche Independent Financial Advisers Limited pays Mr E the balance. I additionally recommend that any interest calculated as set out above on this balance to be paid to Mr E.

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

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

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 29 November 2022.

Ailsa Wiltshire
Ombudsman