DRN-3820573

The complaint

Mr J complains Niche Independent Financial Advisers Limited trading as Niche Pension Specialists (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 the advice was unsuitable for him and believes this has caused a financial loss.

What happened

In March 2016, Mr J'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 J was concerned about what the announcement by his employer meant for the security of his preserved benefits in the BSPS. He was unsure what to do so, based on word of mouth from colleagues, he contacted independent financial adviser Niche. Mr J met with Niche in 2017 and it gathered information about his circumstances and objectives. It advised Mr J to transfer his BSPS benefits into a personal pension, to be invested in cash and investment funds. It said this would allow Mr J to retire at 55 and pay off his mortgage.

Mr J accepted this advice, so on 5 September 2017 £503,413.59 was transferred from Mr J's BSPS to his new personal pension.

In 2021 Mr J complained to Niche about its advice, saying he'd become aware he might have lost guaranteed benefits from his BSPS. In response, Niche said it had undertaken a full financial advice process with Mr J, considered all his available options and explained the risks and benefits to him.

Mr J referred his complaint to our Service. He said that after his pension was transferred, he'd drawn down tax free cash (TFC) from it to pay off his mortgage, but this hadn't been a pressing need – rather, following Niche's advice meant the TFC was available so Mr J made use of it for that reason, but hadn't drawn any other TFC. Mr J confirmed he'd not yet retired and wasn't likely to do so soon, despite now being aged 56.

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

This complaint came to me for consideration. On 28 July 2022 I issued my provisional decision. In summary, I acknowledged that retiring earlier, paying off the mortgage, flexibility, control and potential for higher death benefits on offer through a personal pension would have sounded attractive to Mr J. But I said Niche wasn't there to simply arrange what Mr J 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 J was giving up a guaranteed, risk-free and increasing income, and he was very likely to obtain lower retirement benefits. And there were no reasons which would justify a transfer and outweigh this - Mr J shouldn't have been advised to transfer out of the scheme based on an insubstantial wish to retire at 55 and repay debts that were affordable. And the potential for higher death benefits wasn't worth giving up the guarantees associated with his DB scheme.

So I said Niche should have advised Mr J 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 J for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology, and using the benefits available to Mr J through the BSPS2 at age 65 for comparison purposes.

Mr J accepted my provisional decision and didn't provide any further comments or evidence for me to consider.

Niche provided further comments in response to my provisional decision, and I've summarised what I see to be the relevant points:

- Niche's suitability report was clear and not misleading. And Niche didn't accept it advised Mr J to transfer knowing it would leave him worse off in retirement – this advice was given on the basis of Mr J's specific objectives, and of Mr J getting an ongoing service to manage his pension for the retirement he wanted. Mr J's objectives were substantial reasons for transferring, and Mr J would have transferred anyway, either as an insistent client with Niche or with another independent financial adviser (IFA).
- Niche's advice was suitable because Mr J was taking advantage of a particularly generous transfer value (CETV) he was highly unlikely to benefit from again.
- It must be acknowledged just how much Mr J and his colleagues distrusted the BSPS and wanted to transfer away. And Niche discussed the PPF in detail with Mr J.
- Mr J hadn't previously expressed any concerns about Niche's advice, and had complained in the hope of compensation rather than any actual dissatisfaction.

I explained to Niche that I didn't think its comments changed the outcome of this complaint.

Our Service then contacted both Mr J and Niche to explain that Mr J could choose to have any redress calculated now in line with the regulator's current guidance in FG 17/9, or he 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 J and Niche additional time to respond about this if they wanted to.

Mr J told us he chose to have redress calculated in line with the regulator's current FG 17/9 guidance. Niche didn't provide us with any response 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 J's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests. I'll explain why.

Financial viability

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, they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor.

Mr J was 51 at the time of the advice. Niche's suitability report says Mr J planned to retire at age 55. That Mr J was aware he could do this with his BSPS, but the BSPS normal retirement age was 65 and Mr J was aware an early retirement reduction would apply - so Mr J thought his pension income wouldn't be enough to meet his needs. So for a more level retirement income, Mr J preferred to take more money from his pension at an early age and then reduce that when he began receiving an income from his state pension. But this wasn't possible within the BSPS.

Niche says its advice was suitable at the time because Mr J was taking advantage of a generous CETV he might not have been able to benefit from again. And that Mr J's complaint was motivated by the hope of compensation rather than dissatisfaction with Niche's advice. But Mr J is entitled to complain about Niche's advice, regardless of his reasons for doing so. And while it may be that the CETV was particularly generous at that time, the suitability report nonetheless said the investment return required to match Mr J's current pension at age 65 (critical yield) was 8.13% per annum. If Mr J's DB scheme moved to the PPF, the critical yield required to achieve the same level of benefits was 4.41%. The relevant discount rate was 4.1% a year for 13 years to Mr J's DB scheme retirement age. 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 the composition of assets in the discount rate, Mr J's moderately cautious attitude to risk and also the term to retirement. Even if the CETV was generous at that particular time, there would be little point in Mr J 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, given the lowest critical yield was 4.41%, I think Mr B was likely to receive benefits of a lower overall value than the DB scheme at retirement, as a result of investing in line with that attitude to risk.

I appreciate that at the time of the advice, the details of the BSPS2 hadn't yet been finalised. But on 11 August 2017, the Trustee of the BSPS announced that terms had been agreed for a Regulated Apportionment Arrangement (RAA) to separate the BSPS from Tata Steel and it was expected to be completed in early September. After this, members would be given the choice about their pension options going forward. This was announced before Niche had given its advice, so in order to put Mr J in a fully informed position, I think Niche ought to have given consideration to the benefits Mr J could get from the BSPS2. It was known at the time that the benefits offered by the BSPS2 were expected to be better than PPF compensation for most members.

I don't know the level of benefits Mr J could've taken from the BSPS2 at ages 55 or 65, because he transferred out of the scheme before he had the choice to opt into it. But I think the critical yields applicable to those benefits were likely to have been in between those for the existing scheme and the PPF. And given the PPF critical yields were most likely unachievable, it seems to me that Mr J was also unlikely to be able to improve on the benefits available to him through the BSPS2 if he transferred out.

Niche doesn't accept it advised Mr J to transfer knowing it would leave him worse off in retirement, and says its advice was suitable because of Mr J's specific objectives. Niche also says its suitability report from the time of the advice was clear and not misleading. I note the suitability report said, *"Taking this into account, I would recommend that you do not transfer this pension, as you are likely to be financially worse off in retirement."* But it went on to say, *"However, as you have advised me that you wish to use your pension in an entirely different manner, to that set out by the rules of the [BSPS], I would be happy to give you a positive recommendation to transfer this pension for the following reasons:"* These reasons were related to Mr J's other objectives as recorded in the suitability report. I'll return to these later.

But regardless of the warnings Niche set out in the suitability report, it's clear that Niche advised Mr J to transfer his pension even though it knew it would leave him worse off in retirement. Furthermore, it is clear that Niche's advice was based on Mr J wanting to retire at 55. So the figures it provided were less relevant to him. The suitability report doesn't give the critical yield that would need to be achieved if Mr J wanted to retire at age 55. But I can see in the pension transfer report of 1 September 2017 said that it was 24.71% if Mr J took a full pension. This was three times the critical yield for retirement at age 65 and I think that ought to have been brought to Mr J's attention as this level of growth would've been virtually impossible to achieve, bearing in mind his moderately cautious attitude to risk.

And while Mr J might have expressed a wish to retire at age 55, I'm not satisfied that this was Mr J's concrete plan at the time of the advice. 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 J wanted to retire at 57. I also 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 J's best interest. Mr J was 51 at the time of the advice, so he still had some years to think about his retirement plans. And overall, I don't think Mr J should've been encouraged to make an irreversible decision, when he didn't yet have concrete retirement plans, that would undoubtedly leave him worse off in retirement.

I've considered the cash flow forecasts produced by Niche, which Niche says demonstrates that Mr J could meet his income needs if he transferred out of the DB scheme and would still have total savings (including his pension) worth £1,121,060 at age 100. In the cash flow forecasts called 'with transfer of pension' and 'stress test', it's difficult to see the assumed growth rates over time that have been used, as they vary significantly and are sometimes as high as 36.3%. Instead, I'd expect the growth rates over time used here to be based on the rate of return that an investor with a moderately cautious attitude to risk like Mr J could be expected to achieve, which is between about 2% and 5% a year.

In addition, the cash flow forecasts all show large sums left over at age 100. This is because they are all based on Mr J having very static and minimal expenditure after retiring at age 55, an expenditure of just under £10,000 each year. I don't think this was a realistic level of post-retirement expenditure because it made no allowance for clothes and holidays, or significant one-off expenses. And I think these are things Mr J was likely to need or want at times in his retirement. They also show Mr J withdrawing substantially less from his pension at age 67, when his state pension became payable. So, the cash flow forecasts aren't comparable with Mr J's DB scheme benefits which, under the existing scheme, started at £11,221 at age 55 and escalated each year.

If the cash flow forecasts had used the growth rates for a moderately cautious investor, and had assumed a realistic post-retirement expenditure for Mr J, then I think the forecasts would have shown that Mr J's funds would be at risk of running out if he transferred. And I'm not necessarily persuaded that Mr J understood that he'd need to take substantially less income from his personal pension, instead relying on his state pension, to make his funds last.

In summary, even if the BSPS had moved to the PPF and Mr J's benefits were reduced, he was very unlikely to match, let alone exceed his benefits by transferring to a personal pension. By transferring to a personal pension it was highly likely Mr J would be financially worse off in retirement. So based on the above alone, this transfer wasn't in Mr J'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, as Niche has argued here. So I've thought about whether they applied here, which I'll now address.

Flexibility and income needs

The suitability report gave another of Mr J's objectives as having complete control over his pension, including the level of income he withdrew from it at age 55. The suitability report also recorded that if Mr J retired at age 55, he'd still have a large amount outstanding on his mortgage and so a further objective was for Mr J to have access to TFC from his pension to fully repay his mortgage.

Before making its recommendations, Niche competed a fact find and data capture for Mr J and his wife, to understand their circumstances. In terms of their assets, it recorded their annual income was £40,000 for Mr J and £5,000 for his wife. That Mr J had £4,000 in savings, another pension worth £2,000, and expected to receive inheritances of over £100,000 in the next 20 years. Niche didn't record that Mr J had any life or other insurance protection.

For their liabilities, Niche recorded that Mr J and his wife repaid a total of £190 each month for loan and credit card borrowing. And that their property was valued at £140,000, with an outstanding mortgage of £79,000 for which they repaid £442 each month. The fact find suggested the mortgage term was due to end in 2022. However, based on the outstanding balance and monthly repayment amount, I don't think this is when the mortgage term was originally due to end, but rather when it would end if Mr J retired at 55 and used TFC to fully repayment his mortgage at that time.

Niche recorded that Mr J and his wife had a household monthly income of £2,700 and monthly expenditure of £2,188. Therefore they had £512 disposable income each month. So there was 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 J may have liked the idea of paying off the mortgage at age 55, but I don't think there was any pressing financial need for him to do so. And overall, I don't think the idea of paying off the mortgage was a good enough reason for Mr J to give up a secure, guaranteed, escalating pension income in retirement because, as I say, Mr J was easily able to meet his outgoings without touching his pension and his most significant debt was already being repaid.

Niche argues that the pension payable from the DB scheme at age 55 wouldn't have been enough to meet his income needs bearing in mind that he needed to take TFC to repay the mortgage. But I don't agree, and I'll explain why.

I still think retiring and paying off his mortgage at age 55 was aspirational for Mr J. But even if I accepted this was Mr J's concrete plan, which I don't, I think this was achievable under the DB scheme. I say that because Niche's cash flow forecast and suitability report say Mr J could take TFC of £74,804 at age 55 under the BSPS. And although Niche didn't provide the benefits Mr J was entitled to through the PPF at age 55, I think it would've been around the same if not more. I say this because the PPF had more favourable early retirement factors than the BSPS, particularly if TFC is taken. So, Mr J would've been able to take enough TFC even if his benefits moved to the PPF to repay the outstanding mortgage balance. This was recorded as £79,000 at the time of the advice in 2017 and so would likely be covered by the TFC when Mr J reached age 55 given he'd have been making further repayments during that time.

Niche's data capture for Mr J and his wife says their post retirement expenses totalled just under £10,000 per year. And Niche's suitability report says the BSPS would leave Mr J with annual income of £11,221 per year after taking £74,804 of TFC - this is also suggested in Niche's cash flow forecast. So even if it had it been Mr J's concrete plan to retire and fully repay his mortgage at age 55, his BSPS benefits would have provided sufficient TFC and annual income to enable him to meet these objectives. And I think that would've been the case even if the scheme had moved to the PPF. I don't know what benefits Mr J would've been entitled to through the BSPS2. But I don't think they would likely be substantially different to those available to him under the BSPS.

Mr J would also have additional income from his other pension. Niche's fact find says this was worth £2,000 at the time of the advice, and Niche's cash flow forecast says Mr J contributed £2,400 per year to this, with his employer contributing a further £4,000 per year. Based on this, I think it's reasonable to conclude Mr J's other pension may have been worth at least about £27,000 by the time he was age 55. He could take 25% of this as TFC and could've drawn down further sums if he needed extra income.

So, I don't think Niche should have advised Mr J to transfer out of the BSPS to repay affordable debts or to have flexibility that he didn't really need. Mr J's desire to access his pension doesn't outweigh Niche's responsibility to provide him with suitable advice and act in his best interest. And if Mr J did in fact intend to retire at 55, I think he could've met his objectives by moving with the scheme to the PPF or opting into the BSPS2.

Death benefits

Niche recorded another of Mr J objectives as having more flexible death benefits. His wife had no retirement savings of her own so he wanted her to receive his residual pension fund rather than the 50% spouses pension she'd receive for the rest of her life under the BSPS. And Mr J wanted the option of nominating his children to receive his residual pension fund as well.

I appreciate the idea of leaving a large sum to his family in the event of his death may have sounded attractive to Mr J, as it would to most people. But whilst death benefits are important to consumers and Mr J might have thought it was a good idea to transfer his BSPS benefits because of this, the priority here was to advise Mr J about what was best for his retirement provisions - Niche had to give Mr J an objective picture of the death benefits he already had and decide whether it was in Mr J's best interest to give up his guaranteed pension in favour of the death benefits available through a personal pension.

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 J's death was dependent on investment returns. And if Mr J 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 J 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 J predeceased her.

The suitability report said that under the rules of the BSPS, Mr J's children would receive nothing if Mr J dies - it seems to note this, rather than highlight it as one of Mr J's objectives. But if Mr J 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.

The documents Niche has provided to our Service don't mention Mr J having any health issues or concerns. And the documents include quotations for Mr J regarding whole of life insurance. It seems likely this was discounted by Mr J because of the cost (in excess of £200 per month before underwriting). But I don't think that this was a balanced way of presenting this option to Mr J.

Basing the quote on the transfer value of Mr J's pension benefits essentially assumed that he would pass away on day one following the transfer, and that isn't realistic. Ultimately, Mr J 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 J 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 J. And I don't think Niche did enough to highlight the value of Mr J's existing death benefits or to explore the alternatives available to Mr J to meet this objective.

Concerns about financial stability of BSPS

The suitability report said Mr J had lost faith in the trustees of the BSPS, and Niche has recently told us it must be acknowledged just how much Mr J and his colleagues distrusted the BSPS and wanted to transfer away from it. So I accept that when Mr J met with Niche, he was concerned about his pension, and it's possible Mr J was inclined to transfer out of the BSPS because of these concerns.

However, it was Niche's obligation to give Mr J an objective picture and recommend what was in his best interest. Mr J was concerned about BSPS moving to the PPF, and Niche has told us it discussed the PPF in detail with Mr J. But as I've said above, if Mr J 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. So, I think Niche ought to have reassured Mr J that the possibility of his scheme moving to the PPF wasn't as concerning as he thought.

Furthermore, at the time of the advice, the plans for the BSPS2 had been announced; it wasn't yet guaranteed to go ahead, but it was expected to. The fact that Mr J had the option to join the BSPS2 ought to have allayed his fears about the PPF, particularly as Mr J was likely to be able to meet his retirement needs through the BSPS2 if he chose to join it.

Summary

I appreciate that retiring earlier, paying off the mortgage, flexibility, control and potential for higher death benefits on offer through a personal pension would have sounded attractive to Mr J. But Niche wasn't there simply to just arrange what Mr J might have thought he wanted. It was obliged to really understand what Mr J 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 J 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 J shouldn't have been advised to transfer out of the scheme based on an insubstantial wish to retire at 55 and repay debts that were affordable. And the potential for higher death benefits wasn't worth giving up the guarantees associated with Mr J's DB scheme. So, I think Niche should've advised Mr J not to transfer to a personal pension.

I have to consider whether Mr J would've gone ahead anyway, had Niche advised him not to transfer out of his DB scheme. Niche says Mr J would have gone ahead anyway, either as an insistent client with Niche or with another IFA. But there is nothing in the evidence provided by Niche to make me think Mr J was an insistent client or that he'd been in touch with other IFA's. Mr J 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 J with clear advice against transferring out of the BSPS that explained why it wasn't in his best interest, I think Mr J would have accepted that advice.

Shortly after the advice was given, Mr J would've been faced with the choice of opting into the BSPS2 or remaining in the scheme and moving to the PPF. Given Mr J's age at the time of the advice and the fact he didn't have concrete 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 J 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 J chose to do so). The annual indexation of his pension when in payment was also more advantageous under the BSPS2. So, I think Niche should've advised Mr J to opt into the BSPS2.

So, overall, I think Niche should compensate Mr J 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 J, as far as possible, into the position he would now be in but for Niche's unsuitable advice. I consider Mr J would have most likely opted to join the BSPS2, rather than transfer to the personal pension if he'd been given suitable advice.

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 J 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 has chosen not to wait for any new 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 J.

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 J has no plans at present to retire any earlier than age 65. So, compensation should be based on his normal retirement age of 65.

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 J's acceptance of my final decision.

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

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

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

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

Determination and money award: I uphold this complaint and require Niche Independent Financial Advisers Limited to pay Mr J 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 J 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 J any interest as set out above on the sum of £170,000.

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

If Mr J 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 J can accept my decision and go to court to ask for the balance. Mr J 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 J in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 20 December 2022.

Ailsa Wiltshire
Ombudsman