DRN-4141137

The complaint

Mr W's complaint is about how Nucleus Financial Services Ltd (Nucleus) dealt with the payment of benefits following the death of the account holder, Mr W's mother.

What happened

I issued a provisional decision on 27 April 2023. I've recapped here what I said about the background to the complaint and my provisional findings. I'm sorry that in places I referred, in error, to Firm B instead of Firm T. I've corrected that below.

'*Mr W is represented in bringing his complaint by his father who is an independent financial adviser with a firm I'll call Firm T. I'll refer to Mr W's representative as Mr W senior.*

Mr W and his brother were the nominated beneficiaries for their mother's Wrap Account (which included a self invested personal pension or SIPP) held with Nucleus. Mr W's mother (Mrs W) very sadly died in May 2012. The value of the SIPP fund was then £197,291.50. The SIPP fund wasn't paid out until July 2016. The value had by then increased to £220,823.76. But a 45% tax deduction (£97,780) was made so only £123,823.76 was actually paid out to Mr W and his brother.

Under HMRC regulations the drawdown pension lump sum death benefit isn't taxable if the member was aged under 75 when they died (which Mrs W was) and provided it's paid out within two years of the earlier of the date the scheme administrator first knew of the member's death or the date they could first reasonably have been expected to know of it. As the plan value wasn't paid out within two years of when Nucleus says it had been notified of the death, a tax liability arose.

Mr W senior dealt with matters following Mrs W's death as both Mr W's father and a representative of Firm T. Mr W senior says he telephoned Nucleus in November 2012 to confirm that Mr W and his brother could delay notifying Mrs W's death so that the SIPP fund could remain invested and to ascertain exactly what Nucleus deemed as notification of death for the purposes of the tax charges. Mr W senior says he was told notification would only be deemed to have been made by Nucleus upon receipt of the death claim form, letter from the executors and the death certificate.

Nucleus disagrees. It says its representative was talking about Nucleus' internal process for dealing with a death claim. That isn't the same as notification of death which triggers HMRC's two year rule and isn't something Nucleus has any discretion about.

Another member of Firm T's staff made some enquiries of Nucleus in December 2012 via an electronic messaging system. The communication from Firm T was headed 'Client deceased', gave the date of death and referred to Mrs W as deceased. Firm T said it wanted the pension fund to remain invested and then split between Mr W and his brother with an internal transfer into two new ISAs (Individual Savings Account) and maintaining the current investment portfolio.

Nucleus replied on 6 December 2012 saying, under the current terms and conditions, assets

will always be sold down on notification of death. New terms and conditions were coming into force from 12 December 2012 to allow funds to remain invested but any notifications received prior to then meant the account would be converted to cash. Nucleus said the account could be split between Mr W and his brother once the executors had confirmed that but not re-registered into an ISA – that had to be new money and what Mr W and his brother would get was over the maximum ISA allowance. Nucleus repeated what documents were required for any death claim.

Firm T replied the same day, querying how the claim form should be completed. Nucleus responded that day. A month later the query was closed as Firm T didn't require any further information.

Firm T raised a further query on 23 January 2013. Firm T said it was in the process of gathering all the information required to ensure the case was dealt with as smoothly as possible. Firm T asked what information should be included in the letter from the executors, explaining that the fund should be divided equally and transferred into Mr W's and his brother's pension accounts held with Nucleus.

Nucleus replied the following day querying if Firm T had meant the beneficiaries' pension accounts – previously general investment accounts and ISAs had been discussed. Nucleus said its compliance department had said it might not be possible to move the fund directly to another person's account so it might be that the money had to be paid out to the beneficiaries and then returned to Nucleus as a new contribution to the designated account. Nucleus confirmed the letter from the executors could contain the exact instructions for clarity. Firm T confirmed on 7 February 2013 that the query could be resolved.

Nothing further seems to have happened. Statements continued to be issued regularly to Mrs W at her usual address.

In February 2016 Mr W and his brother wanted to close the account and withdraw the funds. Nucleus confirmed on 30 March 2016 the documents required. Mr W senior emailed the death claim declaration and the death certificate to Nucleus on 22 April 2016. Nucleus acknowledged Mrs W's death on 26 April 2016. The value of the pension fund was then £220,823.76.

On 26 May 2016 Nucleus said that Mrs W's death had been notified in December 2012. That wasn't what Mr W and his brother and Mr W senior had understood. What had happened was discussed at two meetings. But Nucleus maintained the death had been notified in December 2012.

On 8 July 2016 £123,823.76 was paid out to Mr W and his brother after a tax deduction of £97,779.35.

In July 2018 solicitors instructed by Firm T sent a letter of claim to Nucleus pursuant to the Pre Action Protocol for Professional Negligence. Breaches by Nucleus of its duty to exercise reasonable skill and care in administering the Wrap Account were alleged. Including failing to provide correct advice to Mr W senior when he'd sought advice about HMRC's requirements and tax charges in respect of lump sum death benefits under a pension scheme; failing to confirm what Nucleus required for a notification of death to be made in accordance with HMRC's requirement; not advising that notification of Mrs W's death had allegedly been made in December 2012; and not warning that a tax charge would apply if the funds weren't transferred out of the Wrap Account within two years of the alleged notification. Alleged breaches of contract were also cited.

Solicitors instructed by Nucleus responded in November 2018 saying, amongst other things,

that Nucleus didn't provide advice. Mr W senior was authorised to provide financial advice. He was aware of the two year deadline. If he unsure he should've sought guidance from HMRC or a tax adviser, not Nucleus. He hadn't sought clarification of HMRC procedures from Nucleus – he'd sought guidance from Nucleus on its own process. It seemed Mr W senior had formulated a tax avoidance strategy by delaying notification of the death. He'd then called Nucleus with carefully selected questions to elicit particular responses. The other member of Firm T's staff didn't ask abstract or hypothetical questions. She expressly confirmed that Mrs W had died and gave the date of death. The issues of the death claim and death notification had been conflated.

In May 2019 Mr W and his brother complained to Nucleus. They said Mr W senior had come to an agreement with Nucleus not to formally notify Mrs W's death so the funds could remain invested for longer than two years. Mr W senior understood that Mrs W's death would only be deemed to be notified on receipt of the death claim and supporting documents. And, once they'd been received, the fund would be converted to cash. Instead Nucleus had deemed the enquiries made in 2012 as notification.

Mr W and his brother also said Nucleus had given incorrect advice three times and Mr W senior had relied on it in deciding not to draw down in the two year window. Alternatively Nucleus had failed to inform Mr W senior that notification was received in 2012. And correspondence continued to be sent to Mrs W as if she was still alive. The fund wasn't converted into cash. No warning was given that withdrawal needed to be made within two years to avoid incurring a tax charge.

Nucleus didn't uphold the complaint. It referred to the terms and conditions of the Wrap Account and the key features document. It said Nucleus acts on the instructions of the appointed adviser. Nucleus isn't regulated or authorised to provide financial advice. Nucleus denied any arrangement had been reached not to formally notify Mrs W's death to allow the fund to remain invested for longer than two years. Mr W senior's strategy was to avoid tax by delaying notification of the death. He'd called Nucleus with carefully selected questions. Nucleus' responses were correct in line with the questions asked.

Mr W senior had asked Nucleus if the two year window started at the date of death or the notification to the scheme administrator. Nucleus had directed him to HMRC guidance – which said it was the date of notification or the date from which Nucleus could reasonably be expected to know about the death. That was separate and distinct from the process of making a death claim. The answers Mr W senior was given were about Nucleus' own process. When Nucleus was contacted by the other member of staff at Firm T she confirmed, amongst other things, Mrs W's date of death – so Mrs W's death had been notified in accordance with HMRC's rule. The failure to submit the death claim meant the funds weren't converted to cash.

Mr W and his brother remained unhappy and referred their complaint to this service. One of our investigators looked into what had happened. She upheld the complaint. In summary she said the complaint was largely based on an informal conversation between Firm T and Nucleus following Mrs W's death. No recording of the call was available and it would be very difficult to verify that Nucleus could've reasonably have known about Mrs W's death. But about six months after Mrs W had died another employee of Firm T had contacted Nucleus and it was unambiguous that Mrs W had died. The date of the enquiry wasn't clear but Nucleus had replied on 6 December 2012. The initial message and notification was likely to have been no earlier than 5 December 2012. The terms and conditions said, when written notification of the death is received, Nucleus will sell the non cash assets in each account and hold the proceeds on deposit. And, on receipt of the death certificate, the grant of probate or appropriate legal confirmation, the cash balance of the account would be transferred on the instruction of the personal representatives.

Nucleus received notification of the death in early December 2012. That should've triggered the sale of the assets and the proceeds being held on deposit. As the notification triggered HMRC's two year clock, some form of correspondence would be expected in respect of the next steps required. But the information requirement had been largely satisfied – Nucleus had said what documents it needed. Firm T hadn't supplied those until 2016 in the belief that the two year clock hadn't started. But the notification was clear and Nucleus had no discretion – it had to follow the relevant legislation and regulations. It seemed to have been an oversight on Nucleus' part in continuing to write to Mrs W at her home address.

But there'd been a lack of communication about the two year window. It hadn't been referenced in the electronic messages. The investigator said she'd expect, once notification sufficient to trigger the two year window had been received, and in the absence of any further communications, a follow up or reminder would be issued. It wasn't fair and reasonable for Nucleus to have recorded a notification of death and then taken no further action during the two year window. The investigator was also concerned that Nucleus had continued to write to the deceased and hadn't sold the investments in line with its terms and conditions.

But the investigator didn't think Nucleus was solely responsible. A second regulated firm was also involved – Firm T. It would've been aware of the two year rule and had submitted information making Nucleus aware of the member's death. Firm T then took no action for some three and a half years. And Firm T had accepted some responsibility. Mr W was seeking half of his losses on the basis that Firm T had already offered the other half. Although she hadn't seen evidence of the offer or confirmation of payment by Firm T, the investigator thought it was fair and reasonable to say Nucleus should meet half of Mr W's losses on the basis she set out. Her redress proposal included £200 for distress suffered by Mr W on receiving an unexpected tax charge.

Nucleus didn't accept the investigator's view. It referred to the response from its legal representatives to the initial complaint. Nucleus said there was no record of any informal arrangement with Mr W senior to allow the fund to remain invested and not document a date of death which would've triggered the two year period. As a regulated firm, Firm T had to keep records of calls, emails etc. If there was any record supporting the claim about the arrangement Nucleus could review the situation.

Nucleus said there'd been a misunderstanding as to its role. Nucleus doesn't assist in managing the Wrap Account. Nucleus doesn't provide financial advice. Nucleus acts on the instructions of appointed financial advisers. Nucleus wasn't the scheme administrator at the time.

Firm T had asked (via the electronic messaging system) about the documentation required for the beneficiaries to inherit the funds from the pension. In response clear guidance was given as to Nucleus' death benefits process and what documents should be submitted. Nucleus was under no obligation to inform a regulated adviser of the two year timescale. The adviser would've been fully aware of the implications if the inheritance isn't paid within two years. Nucleus representative answered the specific question as to what documentation was required for the death claim. There's a distinction between notifying a death and making a death claim. Nucleus wasn't under any obligation to provide a reminder but a process is now in place whereby a reminder is sent six weeks prior to the two year anniversary.

As agreement wasn't reached the complaint was referred to me to decide.

What I've provisionally 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.

Mr W and his brother have both made more or less the same complaints. So, although I'm issuing separate provisional decisions, they are identical in most respects.

I agree with the investigator that the complaint should be upheld. But my reasoning differs, as does the redress I've proposed. I'm issuing a provisional decision to allow both parties the opportunity to comment on my provisional findings and the redress I've set out.

Exactly what was said during Mr W senior's initial call with Nucleus isn't agreed. Mr W senior says, having spoken to the executors of Mrs W's estate, it had been agreed that there was no need for Mr W and his brother to inherit immediately. Mr W senior telephoned Nucleus to 'see what could be done about leaving the benefits in [Mrs W's] name for the time being'. And, according to Mr W senior, N's adviser said they 'could have an anonymous conversation'. Mr W senior understood that he wasn't notifying Mrs W's death, whether for HMRC's purposes or for Nucleus's internal procedure. Whereas Nucleus says the conversation was all about the procedure with Mr W senior being careful to ensure that what he said didn't amount to saying Mrs W had died.

There's no recording of the call and I think it's going to be impossible now to reach any firm conclusions about exactly what was said and in what context. I don't think there's any suggestion that Nucleus did record at that stage that Mrs W's death had been notified. That might have been because Mr W senior didn't actually say that or because the conversation was 'off the record'. Either way I don't think much turns on the conversation given there was a later exchange in December 2012.

Although Mr W senior says that he made it clear to his colleague that Firm T wouldn't be notifying Mrs W's death, I think it's apparent that Firm T did tell Nucleus in December 2012 that Mrs W had died and gave her date of death. There's no suggestion, from the messages, that Firm T was acting pursuant to any prior agreement about not notifying the death. So, on the face of it, Nucleus was given written notification of the death.

I agree that notification of death and the process by which the death claim is made are separate matters. When the death claim was eventually made in 2016, Nucleus' records showed Nucleus had been notified of Mrs W's death in December 2012. It's notification that triggers HMRC's two year window for payment of benefits tax free. By the time the claim was made, over four years after the death had been notified, the two year period had expired and so the benefits couldn't be paid out tax free.

On the one hand. Nucleus didn't do anything wrong by paying out the benefits after deduction of tax. But, like the investigator, I think there are issues around what Nucleus should've done once it had been notified of Mrs W's death.

The death claim declaration says it should be used to notify Nucleus of the death of a client. That might imply that a death claim can only be notified by that method. I can understand why Mr W senior may have thought, if that form hadn't been submitted, then the death hadn't been notified. Whereas it's the case that simply telling Nucleus that the account holder has died constitutes notification for HMRC's purposes. And, as referred to below, the account terms and conditions just refer to written notification of the death – there's no stipulation that a certain form is required. But, given what I've said below about the account terms and conditions, I don't think anything turns on any apparent anomaly with the death claim form.

The terms and conditions which applied where, as here, the death was notified before 12 December 2012, said, under the heading 'Closure on death':

'When written notification of the death is received, we will sell the non-cash Assets in each Account and hold the proceeds on deposit. All pending transactions will cease (including withdrawals) though trades in progress will be completed and the Charges will continue to be deducted. Upon receipt of the death certificate, the grant of probate or appropriate legal confirmation, we will transfer the cash balance of the Account on the instruction of your personal representatives.'

Nucleus' position is that it had been notified in writing in December 2012 of Mrs W's death. On that basis, Nucleus should've sold the non cash assets and held the proceeds on deposit. I think if that process had been followed, it would've probably, and independently of any death claim having been made by Firm T, triggered some further correspondence, such as notification of the amount realised by the sale of the assets and placed on deposit.

And, having been notified of Mrs W's death, Nucleus should've stopped sending statements to her. I think the absence of any statements would've led Firm T to make enquiries as to how the fund was doing. Firm T would've then found out it had been converted to cash and was being held on deposit, which wasn't what Firm T wanted. Or if the statements had been issued to Firm T instead as the nominated adviser Firm T would've seen that the fund had been disinvested.

I think, in any of those scenarios, Firm T would've made the death claim. Once Firm T knew the fund had been disinvested there was no benefit in delaying making a claim. I'd have thought Firm T would've been keen to get the monies released so they could be reinvested, whether in Mr W's name (or via some kind of trustee arrangements made if there was to be a delay in Mr W being able to access the fund). In my view, if Nucleus had followed its own terms and conditions and procedures, the likely outcome would've been that Firm T would've gone ahead with the death claim.

As to the timing, on 23 January 2013 Firm T said it was in the process of gathering all information to ensure the case was dealt with as smoothly as possible. A detailed question was asked about how the supporting letter from the executors should be worded and the instructions for onward investment of the fund, split between Mr W and his brother. It seems that, towards the end of January 2013, Firm T was giving detailed consideration to submitting the death claim and supporting documentation. I think by then, had Nucleus acted on the notification of death given on, say, 5 December 2012, the fund would've been held on deposit. And, had Firm T known that, the death claim would've then been submitted promptly – say by the end of January 2013.

I'd also agree with the investigator that, having been notified of Mrs W's death, and being aware that would open a two year window for the death claim to be paid without deduction of tax, Nucleus should've reminded or warned Firm T when the two year window was closing and if no death claim had by then been made. I note what Nucleus has said about not having been the SIPP administrator throughout. From 21 December 2006 until 5 August 2012 another company was the SIPP administrator. But Nucleus then took over. Although Mrs W's death predated Nucleus becoming the SIPP administrator, the key events – Nucleus being notified on 5 December 2012 as to Mrs W's death and what happened thereafter – were when Nucleus was the SIPP administrator.

Acting in that capacity I'd expect Nucleus to be familiar with the two year window for paying out benefits without deduction of tax. Regardless of whether Mr W senior knew or ought to have known about the two year period (and I think he did know, hence his attempts to delay notification of the death), Nucleus was the SIPP administrator and would've known. I think Nucleus should've made some reference to it, if only when it seemed no death claim might be made before the expiry of the two year period. That would've avoided the consequences

of any misunderstanding arising from anything that was had been discussed initially about not notifying the death. I note that Nucleus now does issue a reminder six weeks before the two year window closes.

But I think that's probably a secondary consideration given what I've said about what would've happened if Nucleus had followed its own procedures and converted the fund to cash. I don't think it's fair for Nucleus, if it was notified of Mrs W's death, not to have done what Nucleus' own terms and conditions say Nucleus will do in those circumstances – convert the assets to cash and hold on deposit. If Nucleus had done that I think that would've prompted action – a death claim – by Firm T for the reason I've suggested. And I think that claim would've been made by, say,1 February 2013.

As to when the claim would actually have been paid out, I'd suggest it should've taken no more than, say, ten working days. When the claim was actually made in April 2016 it wasn't actually paid out until July 2016 but that was because there was there was a dispute as to what had been agreed. I've assumed, if the death claim was made on 1 February 2013, Mr W and his brother would've received the account proceeds (with no deduction for tax made) by 15 February 2013.

Mr W has mentioned a further financial loss in connection with a student loan repayment he had to make. I don't think any award in respect of this aspect of the matter should be made. Mr W would always have been liable to repay the loan anyway and any payment he made, albeit one which he might not have expected to have to make when he did, will have reduced his loan balance and associated interest in the long term. I don't think there's any financial loss as such.'

I went on to set out what Nucleus needed to do to put things right.

Responses to my provisional decision

Nucleus accepted my provisional findings and the suggested method of redress. Nucleus asked for details of the payment made by Firm T – how it was calculated and the amounts and dates the payments were made.

Mr W senior provided details of the sum paid by Firm T's PI insurers, which we shared with Nucleus. Firm T's PI insurers said they'd agreed to cover 50% of the tax charge paid by the clients as, whilst it was felt Nucleus were fully to blame for the situation, the clients were wholly innocent and so, as a gesture of goodwill, the PI insurers offered to meet 50% of the clients' loss. The tax charge was £97,779.35 and 50% of that was £48,889.68. Firm T's excess was £5,000 and so the PI insurers paid £43,889.68.

Mr W senior said that left a shortfall of £53,890.32. He also said that, as a result of the claim, Firm T's annual PI costs were increased in 2017 and will remain at a higher level for so long as Firm T remains in business. Mr W senior said it was the only complaint he'd had personally in 40 years and the only complaint Firm T had had since it was set up in 2005. He suggested the split between Firm T and Nucleus wasn't fair as Firm T hadn't received 50% of the claim. Mr W senior also suggested that the excess of £5,000 arose because Nucleus had misadvised him.

Mr W senior also said that Mr W incurred further losses and expenses arising from the matter – a large tax bill, a higher than expected repayment in connection with Mr W's student loan and accountant's fees.

Mr W senior explained that, at his request and because he thought it would be quicker and simpler, Nucleus paid out the full amount to Mr W, rather than splitting the payment between

him and his brother. Nucleus then deducted tax at 45%. Mr W's personal allowance was lost – for every £2 of income over £100,000 the then personal allowance of £11,000 was reduced by £1. Mr W senior said that, in addition to a large tax bill, Mr W had to pay an additional £20,000 towards his student loan.

Mr W senior also told us that Mr W contacted an accountant for an opinion who offered to speak to HMRC to explain that the payment arose out of Mr W's mother's pension fund and wasn't actually additional income. But HMRC said he'd still have to pay the student loan repayment. The accountant's invoice for £800 was provided along with an email from the accountant setting out what Mr W's income tax liability for 2016/2017 would've been and a calculation showing his actual position for that tax year.

I considered the further information and evidence that had been provided before letting Mr W senior know my further thoughts. Essentially I wasn't persuaded that any award should be made in respect of any extra tax incurred, the student loan repayment or the accountant's fees.

In summary, Mr W senior accepted some of what I'd said but he maintained that Nucleus' mismanagement of the situation had created a significant tax charge which meant Mr W had to seek the accountant's advice, which wouldn't otherwise have been needed as Mr W's income without the death claim payment was relatively modest and his tax position easily calculated.

Mr W senior also maintained that the excess of £5,000 had arisen because he'd been misled by Nucleus – the scheme administrator – who'd advised that notification of death had to be by their standard process. That meant submitting a claim form and supporting documents, such as the death certificate. And Nucleus' then current terms and conditions said that assets will always be sold down on notification of death. That didn't happen and Nucleus continued to write to Mrs W for four years until Nucleus received formal notification of death in 2016. Nucleus didn't contact Mr W senior at any point to say the two year deadline was coming to an end. It's only now, on reflection and with hindsight, that Nucleus are saying they were notified earlier. The actual position adopted by Nucleus confirms they didn't believe at the time they'd been notified. Mr W senior said his actions were based on what Nucleus had advised at the time and Nucleus' behaviour. He also provided a copy of an email sent by Nucleus to his colleague on 6 December 2012. We had in fact already seen that email.

After I'd considered the further comments made I let both Mr W senior and Nucleus have details of the revised redress I proposed, taking into account the further information provided as to the payment made by Firm T's PI insurers. Nucleus didn't comment. Mr W senior agreed with the calculations we'd set out.

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.

As I've set out above, details of how the payment made by Firm T's PI insurers was calculated have been provided. The tax charge was £97,779.35. 50% of that was £48,889.68 so the PI insurers paid £43,889.68 which took into account Firm T's excess of £5,000, which Firm T hasn't yet paid over.

I note all Mr W senior has said about the excess and that the claim has increased Firm T's annual PI costs in 2017 and going forwards. Mr W senior's position is that he acted on what Nucleus, as the scheme administrator, said and did and so I think he's suggesting that the

excess should be met by Nucleus. He's set out in some detail why he considers Nucleus failed to follow their procedures and misadvised him. But there's some dispute about exactly what happened, especially what was said during Mr W senior's initial call with Nucleus and what, if anything was agreed.

And, as I said in my provisional decision, there's a difference between notifying a death and making a death claim. The latter requires submission of the relevant form supported by documentation such as the death certificate. Whereas simply telling Nucleus that Mrs W had died will be notification for HMRC's purposes and will start the two year time limit running. I still think, and regardless of anything that might have been discussed earlier, that happened in December 2012.

I understand what Mr W senior says about Nucleus' actions not being consistent with Nucleus having been notified of the death then – the assets weren't sold down and Nucleus continued to write to Mrs W as if she was still alive. I can see that it might not have been until Nucleus came to deal with the death claim that Nucleus realised it had been notified earlier of Mrs W's death and that the two year window had expired and so tax was payable.

But, in determining the complaint, I need to consider what should've happened and if Mr W and his brother have lost out because of the way the matter was actually handled. The redress I've awarded aims to put Mr W and his brother in the position they'd have been in if Nucleus had dealt with things as they should've done, having been notified of Mrs W's death in December 2012. It takes into account the payments Mr W and his brother actually received – what Nucleus paid out and the payment from Firm T's PI insurers.

As to Firm T's excess, I think it's fair to take that into account too. Although I note what's been said about why the PI insurers agreed to make a payment, I don't see that an insurance company would've paid out unless some liability was accepted. I think the excess should be taken into account as it's money that would otherwise (if there'd been no excess) have been paid by the PI insurers as part of the claim. And any suggestion that Firm T has been unfairly penalised and/or suffered a financial loss in terms of the excess isn't within the scope of a complaint brought by Mr W and his brother. I consider it fair and reasonable, in calculating the sums due, that Nucleus can deduct the full amount of £48,889.68 (the amount paid by the PI insurers plus Firm T's £5,000 excess) from the redress due to Mr W and his brother.

As I've already indicated to Mr W senior and as I think he accepts, I'm not going to make any award in respect of additional income tax suffered by Mr W. To explain, Mr W senior has said that, at his request and because he thought it would be easier and quicker, Nucleus paid out the full amount to Mr W (rather than splitting the payment between him and his brother. The payment increased Mr W's income, wiped out his personal allowance and created a large tax bill. Further, Mr W had to pay an additional £20,000 towards his student loan.

We've also seen an email from the accountant which says, but for the payment from Nucleus, Mr W's tax liability for 2016/2017 would've been £2,946.60. No calculation for that figure was provided but it would seem to be correct as, excluding the payment from Nucleus, Mr W's total income from employment (£24,087) and rental income (£1,646) would've been £25,733. His personal allowance was £11,000 which left £14,733 so tax at 20% would've been £2,946.60. The accountant also provided a tax calculation for 2016/2017. It showed that Mr W's total income was £246,556 (made up of the Nucleus payment of £220,823 plus the other income totalling £25,733) which gave a total tax liability of £97,050.20 against total tax deducted at source of £100,441. So that would appear to give rise to a tax credit of £3,390.80. It's only when the student loan repayments of £19,860 are taken into account that a liability in respect of tax and national insurance of £16,469.20 arises.

In my provisional decision I said I didn't think any payment in respect of Mr W's student loan could properly be regarded as a financial loss. Even if Mr W had to make a higher payment than he'd ordinarily have done, it will still go towards paying off the loan – an existing obligation – quicker and there could be savings in terms of reduced interest being charged going forwards. And the fact that the payment was made just to Mr W, rather than split between him and his brother, may have exacerbated the situation, particularly in respect of the student loan. I don't think it would be fair to say Nucleus should have to contribute to any unexpected higher repayment when the payment to just one son was made at Mr W senior's request. But I mention that in passing only as it seems, ignoring the student loan repayment, there was no extra tax liability and, as I've explained, I don't think an award in respect of the higher student loan payment is justified.

Mr W senior maintains that a payment in respect of the accountant's fees is justified on the basis that Nucleus mismanaged the situation. But it seems the accountant was employed to seek to mitigate the position regarding the student loan repayment but was unsuccessful. As I've said, the fact that the payment was made just to Mr W seems to have complicated the situation and had unintended consequences, at least as far as the student loan was concerned. To the extent that situation arose because Nucleus agreed to Mr W senior's request to pay it all to one son, I don't think it would be fair for Nucleus to have to meet any costs incurred in unsuccessful negotiations with HMRC about where the payment left Mr W in terms of his student loan repayments.

And, although Mr W senior says the accountant wouldn't have been involved otherwise, it seems that the accountant submitted self assessment tax returns for Mr W for the two subsequent tax years. I note that in addition to his income from employment, Mr W had rental income too. It's not unreasonable to conclude it's likely the accountant would've completed Mr W's self assessment tax return for 2016/2017 anyway and wasn't instructed just because of the payment made by Nucleus. But, even if that was the case, as I've said, the accountant's focus seems to have been on the higher student loan repayment which I think arose in part at least because the payment was just made to Mr W.

All in all my views remain as set out in my provisional decision. I've recapped those in full above and those findings form part of this decision.

Putting things right

My aim in awarding redress is to try to put Mr W, as far as possible, back in the position he'd be in if Nucleus Financial Services Ltd had dealt with things as I consider they should've done.

I've said that the death claim would've been made by 1 February 2013 and paid by 15 February 2013. So Nucleus Financial Services Ltd needs to work out what the value of the account would've been on that date (15 February 2013). Interest at 8% pa simple should be added to that sum from that date to the date of settlement. I'll call that total amount (A).

For the avoidance of doubt the date of settlement is the date the redress calculations are undertaken (by Nucleus Financial Services Ltd) following the issue of my final decision and once Nucleus Financial Services Ltd has been notified (by us) that the final decision has been accepted by Mr W.

What Mr W (and his brother) actually got has to be taken into account. The sum paid out in July 2016 was £123,823.76. Interest at 8% pa simple should be added to that sum to the date of settlement. I'll call that total amount (B). The difference (A) minus (B) is the loss to Mr W and his brother.

In my provisional decision I said that 50% of the loss had been met by Firm T but I didn't have any details as to how that had been calculated or the sum actually paid. We now have details as to the sum actually paid (£43,889.68) and how it was calculated. And, as I've set out above, there's also a £5,000 excess for which Firm T is responsible. Even if the excess hasn't been paid I think, for the reasons I've explained, that it's still fair and reasonable for it to be taken into account.

So Nucleus can deduct the full amount (£48,889.68) plus interest at 8% pa simple on that sum from the date payment (of £43,889.68) was made – which we understand was on 24 July 2019 – to the date of settlement.

Mr T and his brother will have had the use and benefit of the money (which in theory should've included the £5,000 excess payment) from that date so it's fair and reasonable for interest at 8% pa simple to be added from then and included in the total amount to be deducted. I'll call that amount (£48,889.68 plus interest) (C).

So Nucleus is responsible for (A) less (B) less (C). I'll call the result (D). As the redress is to be split between Mr W and his brother, Nucleus Financial Services Ltd will need to pay 50% of (D) to each.

There's also a payment of £200 each to Mr W and his brother for distress and inconvenience.

My final decision

I uphold the complaint. Nucleus Financial Services Ltd must redress Mr W as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 16 October 2023.

Lesley Stead
Ombudsman