DRN-3031737

The complaint

Mrs M has complained about the advice she was given in 2015 to transfer the benefits from her defined-benefit ('DB') occupational pension scheme to a personal pension plan (PPP). She says the advice was unsuitable for her and believes this has caused a financial loss.

What happened

In 2015 Mrs M's former employer offered her an enhanced transfer value (ETV) if she agreed to transfer her pension benefits elsewhere. Mrs M's employer put her in touch with an advisor called LEBC Group Limited who are an appointed representative of TenetConnect Limited (TenetConnect) to discuss her pension options. Mrs M then agreed to transfer her pension to a PPP. For ease of reading I will refer to TenetConnect throughout this decision.

TenetConnect completed a fact-find to gather information about Mrs M's circumstances at the time of the advice. In summary it found:

- She was aged 50, married and had no dependent children.
- She was in excellent health.
- She was employed part time earning £6,000 per annum.
- Her target retirement age was 55.
- She and her husband had a mortgage of £12,000 outstanding, there were four years left on the mortgage.
- She had a defined contribution pension (DC) with an estimated value of around £5,000.
- Her husband also had a DB scheme with an estimated value of £300,000
- Her husband had a stocks and shares ISA estimated to be worth £10,000 – and he was making annual contributions of £1,200 into it.

Mrs M also answered some questions to assess her attitude to risk (ATR) which was assessed to be "high".

Mrs M's objectives were identified as "to live comfortably at retirement"

TenetConnect recommended to Mrs M that she should move her pension benefits from the DB scheme to a PPP. The benefits of the transfer were documented as:

- There will be greater flexibility in an individual plan to enable you to control the way benefits are paid to you at retirement;
- There is a better chance of increasing your pension fund within an individual plan subject to prevailing annuity rates;
- You will have greater investment control and have access to a range of funds or lifestyle investment options to suit your needs;
- The Tax Free Cash (TFC) lump sum is likely to be better in an individual plan, at both your normal retirement age of 65 as well as age 55. This would give you greater freedom to choose how best to draw income;

- The lump sum death benefits are considerably better within an individual arrangement. Additionally, the overall death benefits are considerably better within an individual arrangement from outset

The annual charges for the PPP totalled 0.45% of the fund value. Mrs M accepted TenetConnect's advice and the transfer was completed.

Mrs M complained in 2020 to TenetConnect about the suitability of the transfer advice. She did this having taken advice from a separate advisor about her pension. The new advisor assessed Mrs M's ATR as 'medium' which contradicted the assessment provided by TenetConnect.

TenetConnect accepted Mrs M's ATR had been incorrectly assessed when it gave her advice in 2015 and said that the new advisor's assessment of a medium ATR was more accurate. TenetConnect offered to pay Mrs M £1,000 compensation for its error but still thought the recommended pension was suitable for someone with a medium ATR.

Mrs M didn't agree with the outcome reached by TenetConnect so complained to our service.

An Investigator upheld the complaint and required TenetConnect to pay compensation. The Investigator found that although the critical yield figures supported Mrs M transferring her DB Pension into a PPP the benefits this offered were not enough to outweigh the security offered by the DB scheme.

TenetConnect disagreed and provided further information as to why the advice it gave Mrs M to transfer out of the DB pension was suitable, most of the information it provided had previously been considered but it also stated that at the time of the transfer Mrs M's employer was preparing for a buy-out that may have affected her options to transfer her pension fund later, and potentially left her in a worse financial position.

The Investigator wasn't persuaded to change his opinion, so the complaint was referred to me to make a final decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

When considering what is fair and reasonable, I am required to take into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

Having done so, I've decided to uphold the complaint for largely the same reasons given by the Investigator.

The regulator, the Financial Conduct Authority ('FCA'), states in its Conduct of Business Sourcebook ('COBS') that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, TenetConnect should have only considered a transfer if it could clearly demonstrate that the transfer was in Mrs M's best interests (COBS 19.1.6). And having looked at all the evidence available, I'm not satisfied it was in her 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.

Mrs M was 50 years old at the time the advice was given. The documents from the time of the advice in 2015 show that Mrs M was looking to retire at age 55 if possible.

The critical yield required to match Mrs M's benefits at age 55 was 4.6% if she took a full pension and 1.9% if she took TFC and a reduced pension.

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 3.4% per year for 4 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% per year.

I've taken this into account, along with the composition of assets in the discount rate, Mrs M's medium attitude to risk and the term to retirement at age 55. Based on the critical yields and that Mrs M was looking to retire at age 55, I don't think the recommendation to transfer out of the DB scheme was unsuitable for Mrs M based on the critical yields alone.

However, plans can, and often do change. It is important to remember that these figures were based on Mrs M retiring at age 55. If Mrs M did need or choose to work until the age of 65 the critical yield of the PPP would have been substantially lower, and the potential benefit would have been reduced.

I appreciate the PPP offered the possibility of potentially higher benefits at Mrs M's target retirement age. However, it also came with risks meaning capital could have been lost, compared to the guarantees her DB scheme offered. Considering the DB pension represented the majority of Mrs M's pension provisions I can't see that she had the required capacity for loss to give up the guarantees in her DB scheme.

Flexibility and income needs

I haven't seen any persuasive evidence that Mrs M had a strong need for flexibility in retirement. She also had no significant investment experience and I don't think she had a need to 'control' her investments. Mrs M was 50 years old when the advice was given and could not take TFC until she reached 55. Early retirement-which was important to Mrs M-was possible through the DB scheme. At age 55 Mrs M also had the option to take TFC from her DB scheme albeit a lower amount (£15,570)

Mrs M's representative has confirmed Mrs M did go on to take TFC that was spent on a car, gifts for family members, and to pay a small balance on a credit card. While I'm sure it would be nice to have a higher amount of TFC at her target retirement age I'm not persuaded Mrs M had a strong need for a higher amount of TFC.

Increased death benefits

Death benefits are an emotive subject and of course when asked, most people would like their loved ones to be taken care of when they die. The lump sum death benefits on offer through a PPP was likely an attractive feature to Mrs M. But whilst I appreciate death benefits are important to consumers, and Mrs M might have thought it was a good idea to transfer her DB scheme to a PPP because of this, the priority here was to advise Mrs M about what was best for her retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think TenetConnet explored to what extent Mrs M was prepared to risk the guarantees offered by her DB in exchange for higher death benefits.

I also think the existing death benefits attached to the DB scheme were underplayed. Mrs M was married and so the 60 % spouse's pension provided by the DB scheme would've been useful to her spouse if Mrs M predeceased him. I don't think TenetConnect made the value of this benefit clear enough to Mrs M. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a PPP was.

Furthermore, at the time of the advice TenetConnect looked at the options for Mrs M to take out a standalone life insurance policy. As Mrs M was in excellent health the premiums attached to these policies were relatively low (below £20 per month). So, if Mrs M genuinely wanted to leave a legacy for family members, I think this option would have been more suitable considering the risk of losing capital on her investment by transferring out of the DB scheme.

I appreciate what TenetConnect has said about Mrs M's former employer planning to proceed with a buy-out of the DB scheme but at the time of the advice this was not certain and I haven't seen anything from the time of the transfer to show that a buyout was imminent. The documents also show that the DB scheme had a surplus and Mrs M said in her fact find that she had no reason to question the security and financial stability of the scheme. So, I don't think it would be reasonable to advise Mrs M to transfer out of her DB scheme for this reason.

Suitability of investments

TenetConnect recommended that Mrs M invest in a lifestyle fund. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mrs M, it follows that I don't need to consider the suitability of the investment recommendation. This is because Mrs M should have been advised to remain in the DB scheme and so the investments in the lifestyle fund wouldn't have arisen if suitable advice had been given.

S*ummary*

I don't doubt that the flexibility, control and potential for higher death benefits on offer through a personal pension would have sounded like attractive features to Mrs M. But TenetConnect wasn't there to just transact what Mrs M might have thought she wanted. The adviser's role was to really understand what Mrs M needed and recommend what was in her best interests.

I've also listened to the phone call between the adviser and Mrs M when they went through the fact find and discussed the priority of her objectives and I didn't get the impression Mrs M had clear objectives in mind or fully understood the differences between the PPP and the DB scheme. For example, she had chosen the retention of guarantees as her third most important priority (after early retirement and the provision of a partner's pension). These were all objectives which could be met through the DB scheme. However, the adviser led her to change the priorities around by asking her whether she thought the guarantees were really as high a priority as number 3.

Ultimately, I don't think the advice given to Mrs M was suitable. She was giving up a guaranteed, risk-free and increasing income. By transferring, Mrs M possibly could've obtained higher retirement benefits however I don't think she had the required capacity to loss to take a risk with her pension and there were no other particular reasons which would justify a transfer and outweigh this.

So, I think TenetConnect should've advised Mrs M to remain in the DB scheme.

Fair compensation

A fair and reasonable outcome would be for the business to put Mrs M, as far as possible, into the position she would now be in but for the unsuitable advice. I consider she would have remained in the occupational scheme. TenetConnect 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.

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 Mrs M's acceptance of the decision.

TenetConnect may wish to contact the Department for Work and Pensions (DWP) to obtain Mrs M'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 Mrs M's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mrs M'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 Mrs M 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 her likely income tax rate in retirement – presumed to be 20%. So, making a notional deduction of 15% overall from the loss adequately reflects this.

TenetConnect has already offered to pay Mrs M £1,000 compensation for the distress and inconvenience it has caused. I think this is fair in the circumstances and I don't require it to pay anything further in relation to this.

The compensation amount must where possible be paid to Mrs M within 90 days of the date TenetConnect receives notification of her 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 TenetConnect to pay Mrs M.

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

Where I uphold a complaint, I can award fair compensation of up to £160,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £160,000, I may recommend that the business pays the balance.

Determination and money award: I require TenetConnect to pay Mrs M the compensation amount as set out in the steps above, up to a maximum of £160,000.

Where the compensation amount does not exceed £160,000, I additionally require TenetConnect to pay Mrs M any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I only require Tenet Connect to pay Mrs M any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that TenentConnect pays Mrs M the balance. I additionally recommend any interest calculated as set out above on this balance to be paid to Mrs M.

If Mrs M accepts my decision, the money award is binding on TenetConnect. My recommendation is not binding on TenetConnect. Further, it’s unlikely that Mrs M can accept my decision and go to court to ask for the balance. Mrs M may want to consider getting independent legal advice before deciding whether to accept this decision.

My final decision

I uphold the complaint. My decision is that TenetConnect Limited should pay the amount calculated as set out above.

TenetConnect Limited should provide details of its calculation to Mrs M in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs M to accept or reject my decision before 22 June 2022.

Terry Woodham
Ombudsman