

## The complaint

Mr S complains about Uniec Prestige Limited (“Uniec”), an appointed representative of TenetConnect Limited (“Tenet”). He says Uniec gave him unsuitable advice when it recommended that he transfer out of his defined benefit (DB) occupational pension scheme (OPS) to a personal pension plan (PPP).

For ease, I’ll refer to Tenet throughout my decision, which should be understood to include Uniec. Mr S is represented in this matter by a third party (“the representative”).

## What happened

Mr S approached Tenet for advice on 12 March 2017. Following a meeting, a fact find, financial planning questionnaire and pension transfer attitude questionnaire were completed for Mr S. In summary, Tenet recorded the following:

- Mr S was 61 years old, married and in good health. He had no financial dependents.
- Mr S was employed, earning £44,000 per annum (pa) and receiving £65 per month from a pension with a former employer. His wife was retired, receiving £11,000 pa in pension income.
- Mr and Mrs S’ annual expenditure was £22,260, expected to be £19,500 in retirement.
- Mr and Mrs S were debt-free, the value of their home was approximately £350,000. Mr S had around £200,000 in savings held in Bonds and Cash Individual Savings Accounts (ISAs). He also had £19,382 invested in a Stocks & Shares ISA. Mrs S expected inheritance of £75,000 which was in probate at the time
- In total, Mr S had six pensions: a pension already in payment; an OPS pension with his existing employer with a Cash Equivalent Transfer Value (CETV) of £201,176.76; a Group Personal Pension (GPP) Plan with a CETV of £47,127.38 into which his employer contributed 15% of his salary each month; two Section 32 (S32) Buy Out Plans with a combined transfer value of £29,799.84 and a personal pension plan (PPP) with a CETV of £114,650.60.
- Mr S wanted to retire by December that year, at age 62. His attitude to risk (ATR) was “*moderately cautious*”, his willingness to accept risk was “*lowest medium*”, and his capacity for loss was “*small to medium*”.
- In order of importance, Mr S’ priorities were 1) retiring early, 2) having personal control over his pension fund, and 3) providing a lump sum to his wife and children after he died. If transferring was deemed suitable, another priority was having greater fund choice.

A Transfer Value Analysis (TVAS) report was produced in April 2017, with Tenet’s Suitability Report for Mr S finalised in May 2017. In summary, Tenet said the following in its report:

- Mr S wanted to retire and spend more time with his family. He also wanted control and flexibility over his OPS pension, and the ability to invest in a wide range of funds.

- Although Mr S said that as he wanted to retire that year he wanted to invest his pension fund in the short term, the time span was likely longer given that he also wanted to preserve the fund, leaving some of it as a lump sum to his wife and children upon his death.
- Mr S didn't intend to take tax free cash (TFC) but wanted the option in the future.
- Mr S needed a higher income between ages 62 and 66 before his state pension and S32 plans started being paid and bridged the income gap enabling him to retire early. At age 66 Mrs S would also have her state pension and together, Mr and Mrs S would have secure pension income from other sources to cover their essential expenses. This gave Mr S scope to be more flexible with his OPS pension.
- Taking benefits from Mr S' OPS wasn't an option as they were too low to support early retirement and didn't provide the flexibility to vary income.
- The investment return (critical yield) required from an alternative pension arrangement to match Mr S' OPS benefits available from age 65 was 16% pa. If Mr S took maximum TFC, it was 6.65%. 16% was unrealistic growth, so Mr S would likely receive lower benefits by transferring. However, this had to be weighed up against the importance of achieving his objectives at that time.
- It was agreed that Mr S would leave his GPP where it was until he retired and left his employer. His S32 plans would also remain where they were.
- As he had sufficient guaranteed pension income from other sources, Tenet advised Mr S to transfer his PPP and OPS to a PPP investing in a collective investment scheme before moving into Flexi-access Drawdown when he turned 62.

Mr S accepted Tenet's advice and later transferred.

In August 2020, through his representative, Mr S complained to Tenet about the advice he'd received in 2017. Tenet responded to the complaint and didn't uphold it, saying the advice was suitable and clearly met Mr S' stated objectives.

Unhappy with Tenet's response, Mr S' representative referred the complaint to our service. One of our investigator's considered the matter, concluding that the complaint should be upheld. In short, he didn't think transferring was in Mr S' best interests.

Tenet responded and disagreed, in summary, saying that Mr S' objectives presented a strong case for transferring and the available evidence supported this

As no agreement could be reached, the matter has been passed to me for a 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.

Having done so, I'm going to uphold Mr S' complaint. I'll explain why.

#### *The regulator's position*

At the time of Tenet's advice, the regulator, the Financial Conduct Authority (FCA), set out the principles for assessing suitability. The relevant rules in the FCA's Handbook and Conduct of Business Rules (COBS) are 9.2.1 and 9.2.2. These required Tenet to gather sufficient information from Mr S to ensure its recommendation met his objectives; that Mr S could financially withstand the risks associated with these objectives and that Mr S had the necessary experience and knowledge to understand the risks involved in the transaction.

DB schemes like Mr S' OPS typically have significant benefits and guarantees. Giving these up and subjecting future pension income to the risks associated with unpredictable investment returns should only be done where it can be shown it's clearly in the best interests of the consumer. Under 19.1.6 the COBS rules at the time of the advice said:

*"When advising a retail client who is (...) a member of a defined benefits occupational pension scheme (...), a firm should start by assuming that a transfer (...) will not be suitable. A firm should only consider a transfer (...) to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer, (...) is in the retail client's best interests."*

Given the regulator's position, my starting point is that a transfer won't usually be suitable. So, Tenet should've only considered a transfer if it could appropriately demonstrate that there were compelling reasons why, instead of maintaining safeguarded benefits in the BSPS, the transfer was in Mr S' best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

#### *Mr S' position at the time of Tenet's advice*

At the time of the advice, Mr S was 61 years old with almost 14 years qualifying service in his employer's OPS. In addition to his OPS and state pension entitlement, Mr S' retirement provision comprised of five other pensions, three of which would have provided guaranteed income. But it was Mr S' OPS benefits which were the backbone of his retirement provision, making up over 50% of the total transfer value of his pensions. And when considered alongside his wife's relatively modest pension provision, Mr S' OPS benefits also represented the largest proportion of the couple's future retirement income.

Mr S had no debts or dependents. He owned a mortgage free property, held £200,000 in savings, and had almost £20,000 invested in a Stocks & Shares ISA. By all general appearances, Mr S' financial position was rather favourable, and Tenet concluded that this afforded Mr S the freedom to be more flexible in the approach he took with his pensions.

Given how long Mr S had been working and his proximity to state retirement age (age 66), it's understandable that he wanted to consider his retirement options, including transferring out of his OPS. But by transferring, Mr S would be giving up what was intended to provide the vast proportion of his secure income in retirement, in favour of an uncertain income largely reliant on the investment performance of a new arrangement. So, notwithstanding Mr S' good financial position – to which his OPS was a significant contributing factor – I think transferring represented a relatively risky strategy, which should've made Tenet proceed with caution.

Furthermore, while Mr S' circumstances may have indicated he had some capacity for loss, his answers to Tenet's questionnaires, made it clear that exposure to financial risk, uncertainty and potential losses weren't things he was entirely comfortable with. Notably, Mr S responded to the statements below from Tenet's questionnaires as follows:

- *I would be willing to risk a percentage of my income in order to get a good investment return – Disagree*
- *I have been extremely cautious in my past financial investments – Agree*

- *I believe that it is reckless to take financial risks – Agree*
- *When I'm faced with a financial decision, I am generally more concerned about the possible loss than the probable gains – Agree*
- *I do not feel comfortable with financial uncertainty – Agree*
- *I would rather put my money in a bank account than invest in shares – Agree*

Tenet concluded that Mr S met the description of a “*moderately cautious*” investor – defined as someone who typically preferred certain outcomes to gambles and who was less able to adapt to losing money. I agree with Tenet's characterisation of Mr S here and it doesn't suggest to me that transferring was necessarily the most logical solution for him in the way Tenet asserts it was. I've not seen anything to indicate Mr S had the experience, knowledge or appetite for risk to assess or fully appreciate what the transfer of his OPS presented. And I don't think he would've agreed to it if he'd sufficiently understood it.

### *Financial Viability*

An important part of assessing the viability of a DB transfer, is a careful analysis of the investment returns required from any investments in the receiving scheme, to match (let alone exceed) the benefits being given up by transferring out of the DB scheme. And that needs to be done in conjunction with other important considerations, including an investor's ATR, financial circumstances, and objectives.

Tenet's advice was given during the period when the Financial Ombudsman Service was publishing 'discount rates' 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, I consider they provide a useful indication of what growth rates would've been considered reasonably achievable for a typical investor when the advice was given in this case.

The critical yields Tenet's TVAS set out for Mr S indicated the transfer might not be in his best interests or financially viable – the required investment return was incredibly high. The critical yield required to match Mr S' OPS at his desired retirement age (62), based on him not intending to take TFC, was more than 50% pa. At age 65, the critical yield required to match Mr S' benefits was 16% if he took a full pension. So even if the arrangement he transferred to achieved the highest maximum growth at that time, it was unlikely that Mr S would receive a materially higher pension as a result of transferring. To come anywhere near to achieving this, he would've needed to take investment risk which likely exceeded his ATR.

This compares with the discount rate of 2.3% per year for 1 year to retirement at age 62 and 2.8% for 4 years to retirement at age 65 in this case. 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, what Tenet recorded as Mr S' ATR – “*Moderately cautious*” – and the term to retirement. The critical yield in this case was considerably higher than both the discount rate deemed achievable over the same period, and the upper-band growth rate used by the regulator. Tenet itself said the critical yields required to match Mr S' OPS benefits were unrealistic, and that Mr S would likely receive a reduced pension by transferring.

Tenet produced a cashflow analysis which it said showed that, based on Mr S taking income via drawdown over the 4-year period between retiring at age 62 and receiving income from other pensions at age 66, his transferred fund was unlikely to be exhausted by age 87 – his life expectancy at the time. However, I have my doubts about how meaningful this analysis was, given that it assumed investment growth of 5% pa. In my view this was too optimistic a rate of return given what Tenet determined Mr S ATR was. And without considering

alternative scenarios where growth might be lower than expected, I don't think Tenet could, with confidence, provide Mr S with the assurances it did or ensure he had adequate information to make an informed decision about whether transferring, particularly in the hope of leaving maximum lump sum death benefits to his wife and children was realistic, or even worthwhile.

Notwithstanding what I've said above, financial viability isn't the only consideration when giving transfer advice. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. My understanding of Tenet's position is that the basis of its recommendation was the benefit transferring had for Mr S in terms of other objectives being met.

### *Flexibility and income needs*

Tenet referred to Mr S' need for flexibility as a reason for recommending the transfer. Specifically, it said that Mr S wanted to retire early, vary his retirement income according to his needs, and access a wider range of funds for investment.

It's understandable that Mr S may have wanted to retire early. This was already an option through his OPS. But Tenet discounted this, saying the benefits available at age 62 were too low to support early retirement, so transferring was necessary.

The retirement income Mr S required was recorded as £19,560 pa. As Mrs S was already receiving £11,000 pa from a pension, this left a shortfall of £8,560 pa which Mr S needed to make up to retire at age 62. Tenet determined that Mr S would need a higher income between ages 62 and 66 before he started receiving income from his state pension and S32 plans – together estimated to provide £11,833.28 pa – which would more than cover his income needs. This didn't include the additional £6,783 pa Mrs S was estimated to receive from her state pension less than 2 months after Mr S turned 66.

To make up the £8,560 pa retirement income shortfall between age 62 to 66, Tenet concluded that taking benefits from Mr S' OPS wasn't an option. If Mr S took benefits from the OPS at 62, Tenet said he'd receive £6,700 pa or TFC of £29,400 and a reduced pension of £4,400 pa. Mr S didn't intend to take TFC as he had no requirement for it, so I consider the £6,700 pa figure to be most relevant. On its own I accept that the OPS income wouldn't cover the entire retirement income shortfall, but it would've reduced it from £8,560 pa to just £1,860 pa, equating to £7,440 for the four-year period between Mr S retiring at age 62 and turning 66.

Bearing in mind Mr S' level of savings and lack of debt, it seems to me that if retiring at 62 was essential – I'm not persuaded it was – then a reasonable consideration ought to have been using a relatively small amount of Mr S' savings to help fund this in the short-term. Doing so would've given Mr S the benefit of retiring early, while retaining the valuable benefits provided by his OPS, including a guaranteed index-linked pension income for life, a 50% spouse's pension and 5-year guarantee period.

I also haven't seen anything to suggest that Tenet considered what income might've be available under Mr S' GPP from age 62 and the extent to which this could help meet his retirement income shortfall without resorting to taking irreversible action with his largest pension. Unlike his OPS, the GPP 'only' represented around 10% of Mr S' retirement provision and didn't include any guarantees. Although Tenet said it was agreed that the GPP would be left where it was and reviewed after Mr S left his employer and retired, this meant that despite having been asked to review the GPP (along with Mr S' other pension arrangements), Tenet failed to provide Mr S with a complete picture of the various options available to him when considering early retirement. Without this, I'm not satisfied Tenet met

its obligation to ensure Mr S was in possession of all the relevant information to make an informed decision about transferring for this reason.

Notwithstanding what I've said above, nothing was recorded to suggest that retiring early was an essential requirement (as opposed to a 'nice to have') or that Mr S had concrete plans in this respect. Tenet ought to have established why Mr S wanted to retire at age 62 and gone on to consider whether this was required, worthwhile or where compromise was needed. Without this, saying Mr S wanted to retire early wasn't a fully articulated objective on which Tenet could reasonably conclude that transferring was in his best interests.

In terms of having flexibility with how he took his retirement income, this isn't an objective Tenet gathered much information about either, despite saying it was "*very important*" to Mr S and something he "*required*". The only specific example given by Tenet for when Mr S might need to vary his pension income was between age 62 and 66 when Tenet determined that, having transferred his OPS, Mr S would, for a brief period, need to draw funds to make up his retirement income shortfall. But this flexibility was a by-product of Tenet's advice to transfer, as opposed to a genuine need for flexibility.

Although I accept Tenet's fact find indicated Mr S wanted some flexibility with his pension, I'm not satisfied there's enough to demonstrate transferring for this reason was something Tenet sufficiently explored with Mr S or that compelling reasons were provided such that it was reasonable to conclude sacrificing his OPS guarantees – which unlike drawdown didn't carry the risk of being exhausted due to longevity and/or investment performance – was in his best interests. Tenet also recorded that Mr S preferred financial certainty, but I can't see that it ever reconciled this with his flexibility objective and the lack of certainty this potentially brought through any discussion with Mr S. Especially not to such a degree that would explain why the latter was apparently a greater priority than the former.

Tenet suggested that Mr S' wish to invest in a wider range of funds for potential growth, meant that transferring was necessary. But Mr S' responses to Tenet's fact find and questionnaires confirmed that he had limited investment experience, didn't want to access more funds at the expense of paying too much in annual management charges, and preferred to put his money in a bank over investing.

I've seen nothing to indicate that any attempt by Tenet, in discussion with Mr S, to reconcile the obvious contradictions regarding this objective or to establish what, in practice, investing in wide-ranging funds, really meant for Mr S and what level of growth he was seeking. And it didn't determine what paying "*too much*" in charges meant for Mr S, especially relative to his OPS. So, it's not clear to me how Tenet could be confident that transferring for a diversified investment approach was really in Mr S' best interests. If this really was important to Mr S, I think Tenet should've considered the funds available under his other pensions. There's insufficient evidence the alternative options were adequately explored before being discounted by Tenet.

### *Death benefits*

Regarding death benefits, Tenet recorded that Mr S wanted flexibility, leaving some of his pension fund as a lump sum for his wife, daughters, and grandchildren. It's understandable that Mr S wanted to ensure his family benefited from his pension when he died. However, based on what I've seen, I don't think Tenet has provided sufficient evidence, demonstrating that transferring for this reason was worthwhile; that Tenet met its obligation to provide Mr S with enough information about the death benefits available under his existing arrangements (particularly his OPS); or that it had regard for the effect of replacing his OPS benefits with the options under a new arrangement.

Tenet's suitability report very briefly set out what Mr S' death benefit entitlement under his OPS was – a spouse's pension of £3,350 pa – and outlined, in general terms, the type of death benefits available through a PPP. The TVAS provided little more than Tenet's suitability report did and none of the documentation I've seen indicated what, in monetary terms, death benefits under the recommended PPP could – depending on certain factors – be when Mr S died. Because of this, I'm not satisfied that Tenet ensured Mr S had a complete picture of what his various death benefit options were or that he fully understood them, such that he could make an informed decision about transferring for this reason. Mr S asked Tenet to review *all* of his pensions as part of the advice process, however the suitability report I've seen, showed no attempt by Tenet to establish what Mr S' death benefit entitlement across his various pension arrangements was.

Transferring to a PPP did offer flexible death benefits – nominated beneficiaries could choose to convert the fund value to secure a lifetime annuity, lump sum, income drawdown or any combination of these. But Mr S was in good health, there was nothing to suggest he couldn't expect a normal life expectancy and therefore require money from the PPP to meet or supplement his income needs in retirement. So, this could mean that upon death the size of Mr S' PPP fund remaining for his beneficiaries could be much smaller, particularly if investment returns were less favourable than expected.

In addition to setting out the death benefits available, Tenet needed to establish what Mr S' specific needs in this regard were. Without doing so, it was impossible to say with any certainty what fund might reasonably be available to Mr S' beneficiaries further down the line. Tenet ought to have discussed what, in real terms, Mr S' position on death benefits was and specifically how he wanted to provide for his wife and children in this respect – for example, why he wanted to leave his wife a lump sum benefit as opposed to a guaranteed ongoing spouse pension and how much he hoped to leave to his daughters.

Mr S' children weren't financially dependent on him, so it seems to me that using his pension provision to help them financially in the future was, like the ability to alter his income, a 'nice to have' as opposed to an essential requirement that warranted transferring out of his OPS.

Tenet considered the option of Mr S purchasing level term life assurance for the CETV of his OPS but discounted this, saying a monthly premium of £85.95 wasn't appealing to Mr S given that he could have personal control over this fund immediately and for his own benefit. Tenet offered no comment on this, seeming to just accept Mr S' position and in doing so determined that transferring was the most appropriate course of action. This doesn't in my view constitute suitable advice. If providing a lump sum on his death was a genuine objective, I think level term life assurance could potentially have achieved this while enabling Mr S to maintain safeguarded benefits. The cost of this doesn't appear to be prohibitive given Mr S' financial position.

### *Control and concerns about the financial stability of the OPS*

Tenet recorded one of Mr S' priorities as having personal control over his OPS. Its notes indicated that Mr S had concerns about his OPS being in deficit and that he preferred to break all ties with his employer and move his funds to a plan under his control.

Although this might suggest that Mr S may have already been leaning towards transferring, Tenet still had a responsibility to address and appropriately manage his concerns. It ought to have explored, interrogated and, where necessary, corrected Mr S' views about his OPS, ensuring that any decision being made about transferring was based on a sound understanding of his options and the features, risks and benefits of these. I can't see that this happened here or that Tenet made any concerted attempt to allay Mr S' misgivings about the scheme. The extent to which Mr S' concerns were dealt with is captured in Tenet's

suitability report where it merely reproduced an extract from the scheme's latest funding position report and provided no context or commentary on its contents.

Tenet's recollection is that in terms of control Mr S felt he was in a better position than the OPS trustees to help himself and his family in the future. But again, there was no attempt to question or challenge Mr S about what he specifically meant when he said he wanted his pension in his own control and what he thought might happen if he didn't transfer to secure such control. While he might have desired control, Mr S had minimal investment knowledge and experience, so he was unlikely to be – let alone remain – capable of managing his investments himself into old age. And although Tenet said it would review Mr S' investments regularly, this meant that by transferring, Mr S would not only be paying Tenet 2.022% of his OPS and PPP transfer value, but also 0.5% of his total fund value annually, to cover the cost of ongoing advice.

The reality was that Mr S' OPS comprised of two sections, one of which his benefits were linked to. The funding level of the section holding Mr S' benefits was 102%, while the other section was at 90%. So, although the overall funding level of the two sections combined showed a shortfall, the outlook wasn't dire and the most recent update at the time of the transfer said the scheme's deficit was expected to be eliminated. I haven't seen anything to show that a buyout was imminent.

Overall, I don't think Tenet did much to alleviate Mr S' concerns around the scheme. If appropriately managed, I don't believe Mr S' fears would've been sufficient justification for him to transfer at time.

### *Summary*

Although Mr S, a standard retail investor, may have been open to taking some risk, he wasn't prepared to take a significant amount. While having regard for Mr S' circumstances, objectives, ATR and capacity for loss, it was Tenet's responsibility to evaluate the merits and shortcomings of transferring, while considering alternatives, to determine the best course of action for Mr S, especially in terms of what would place him in the best possible position in retirement. I'm not satisfied Tenet did this. And in my view, transferring at a time when Mr S should've been reducing – not increasing – the risk he was taking, presented a level of risk that was unnecessary.

Although I'm mindful of Mr S' recorded objectives and Tenet's view that, together, these made a strong argument for transferring, Tenet was ultimately the pensions expert and Mr S was heavily reliant on its advice. He couldn't effectively assess whether his objectives, alongside other important factors, meant it was appropriate to take additional risks with his OPS benefits. The available evidence doesn't persuade me that it was. And I don't find Mr S' recorded objectives significant enough incentives, to form the basis for Tenet's recommendation that Mr S transfer. Nor do I agree that Mr S' objectives were so fixed or compelling that transferring out of his OPS was an inevitable course of action Mr S would've always taken, irrespective of the advice Tenet gave.

I acknowledge that Tenet set out the risks associated with its advice to transfer but that doesn't make an unsuitable recommendation suitable. Ultimately, I think Tenet should've advised Mr S to remain in his OPS. As it stands, following the transfer, Mr S didn't stop working and retire. He continues to work for the same employer and hasn't drawn down any funds since transferring.



## Putting things right

On 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance and set out its proposals in a consultation document -

<https://www.fca.org.uk/publication/consultation/cp22-15.pdf>

In this consultation, the FCA 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.

A policy statement was published on 28 November 2022 which set out the new rules and guidance - <https://www.fca.org.uk/publication/policy/ps22-13.pdf>. The new rules will come into effect on 1 April 2023.

The FCA has said that it expects firms to continue to calculate and offer compensation to their customers using the existing guidance in FG 17/9 for the time being. But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with the new rules and guidance.

We've previously asked Mr S whether he preferred any redress to be calculated now in line with current guidance or wait for the new guidance/rules to come into effect.

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 S.

A fair and reasonable outcome would be for TenetConnect Limited to put Mr S, as far as possible, into the position he would now be in but for Tenet's unsuitable advice. I consider Mr S would have most likely remained in his OPS and not drawn benefits until his normal retirement age of 65. So, the calculations should be based on Mr S staying in his OPS until age 65.

Tenet 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 Mr S' acceptance of the decision.

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

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

Tenet should also pay Mr S £300 compensation. I think this fairly reflects the distress and inconvenience this matter has caused, especially bearing in mind the significance of Mr S' DB OPS entitlement to his overall pension entitlement.

The payment resulting from all the steps above is the 'compensation amount'. This amount must where possible be paid to Mr S within 90 days of the date Tenet 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 Tenet to pay Mr S.

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

If the complaint hasn't been settled in full and final settlement by the time any new guidance or rules come into effect, I'd expect Tenet 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 £160,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £160,000, I may recommend that the business pays the balance.

### **My final decision**

Determination and money award: I uphold this complaint and require TenetConnect Limited to pay Mr S 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 would additionally require TenetConnect Limited to pay Mr S any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I would only require TenetConnect Limited to pay Mr S any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that TenetConnect Limited pays Mr S the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr S.

If Mr S accepts this decision, the money award becomes binding on TenetConnect Limited.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or

reject my decision before 9 February 2023.

Chillel Bailey  
**Ombudsman**