The complaint

Mr C complains about the advice given by TenetConnect Limited ('Tenet') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a self-invested personal pension ('SIPP'). He thinks the advice may have been unsuitable for him and has caused a financial loss.

What happened

In March 2016, Mr C's employer announced that it would be examining options to restructure its business, including decoupling the employer's DB scheme (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.

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

Mr C chose to join the BSPS2 so that he didn't lose this opportunity. However, he wanted to know what the best course of action for him was so he got in touch with Tenet. Mr C met with Tenet in December 2017 and it gathered information about his circumstances and objectives. It noted Mr C was soon to be aged 50 and was married with non-dependent children. That Mr C and his wife owned their home and two rental properties, one of which had a small mortgage due to be repaid in around five years. It was recorded that Mr and Mrs C had savings of £100,000 and significant disposable income. That Mrs C was already retired and in receipt of an annual pension of around £12,000 per year and received benefits amounting to £4,000 per year.

Tenet noted Mr C had a 'balanced' attitude to risk; that he wanted to retire early between ages 55 and 58 and have a net household income of between £34,000 and £44,000 per year. It was further noted Mr C and his employer were contributing 16% of his salary per month to his employer's new defined-contribution ('DC') pension scheme, equivalent to around £6,000 per year, which was worth around £32,000 at the time of the advice. However, Tenet noted that Mr C hoped to make additional contributions that would provide him with a fund worth £100,000 by the time he retired.

In February 2018 Tenet advised Mr C to transfer his BSPS benefits to a SIPP. It said this would allow Mr C to achieve his objectives of control and flexibility of income, give him the option to semi-retire and drawdown a higher income at first before reducing this when he and Mrs C's state pensions became payable. It said this strategy would meet his objective of providing better death benefits for his wife, children and grandchildren as a sizable fund would likely be left on his death. Mr C accepted this advice and £551,406 was transferred from the BSPS to his new SIPP.

In 2021 Mr C complained to our Service about the advice following correspondence from the regulator suggesting that the advice he received may have been unsuitable and caused him a loss. The complaint was passed to Tenet but it didn't uphold it. Tenet said the advice was suitable as it allowed Mr C to meet his objectives, such as accessing the pension flexibly from age 55 and being able to pass on the full pension to his wife and children in the event of his death. It said Mr C couldn't meet his objectives by joining the BSPS2 or moving to the PPF.

Unhappy with Tenet's response, Mr C asked our Service to investigate. One of our Investigators looked into the complaint and said it should be upheld. He thought the advice was unsuitable as Mr C wasn't likely to be able to match or exceed the benefits available to him under either the BSPS2 or the PPF. He recommended Mr C should be compensated based on him having opted to move with the scheme to the PPF because Mr C wanted to retire early and the PPF was more favourable in these circumstances.

Tenet didn't agree – it maintained the advice was suitable as the transfer met all of Mr C's objectives. It said the suitability of the advice shouldn't be assessed purely based on whether Mr C could get a higher pension by transferring. And in any event, it said Mr C wanted to take a higher income until his state pension became payable so he could enjoy the early years of his retirement with his wife, who was almost ten years older than him and wasn't in good health. It said this strategy allowed Mr C to vary his income and that this would also allow him to pass on a significant sum on his death.

Mr C didn't agree with the Investigator's proposed redress – he said retiring early was something he wanted to consider but it wasn't a concrete plan. He said the adviser had been the one to suggest this and convinced him he'd never run out of money. Mr C said even if he did end up retiring early, he could've used his savings or DC pension to provide some income. This would allow him to avoid taking his full DB pension until age 65. Mr C added that he had already opted to join the BSPS2 and says he should've been advised to stick with his choice. So, he thought compensation should be based on him having joined the BSPS2 instead.

The Investigator accepted this and subsequently directed Tenet to provide compensation based on Mr C joining the BSPS2 and retiring at age 65 instead.

Tenet still didn't agree. It maintained that Mr C had several clear objectives that could've only been met by transferring out of the BSPS. It said it was entitled to provide advice based on those objectives, which were recorded at the time. Tenet added that it had provided lots of balanced details about the BSPS2 and the PPF and Mr C was fully aware of what he'd be giving up. It also said that its cash flow modelling demonstrated Mr C's funds would last him until age 99 without him having to reduce the level of income he took. Overall, Tenet thought it was clear the transfer was in Mr C's best interest.

The complaint was subsequently referred for a final decision.

In August 2022 the regulator, the Financial Conduct Authority ('FCA'), launched a consultation on changes to its DB transfer redress guidance. So, the Investigator wrote to Mr C to advise him of the FCA's proposed changes which were due to come into effect in April 2023 and to give him the option to have any redress due to him calculated under the then current guidance or to wait for the new rules to come into effect. Mr C chose to have his compensation calculated under the new rules and guidance.

The Investigator subsequently informed both Mr C and Tenet that if the Ombudsman considering the case decided to uphold it, they may require Tenet to calculate any redress owed to Mr C using the FCA's BSPS-specific redress calculator. Although the calculator has been developed specifically for the BSPS consumer redress scheme, the Investigator explained that the FCA encouraged firms to use the calculator for non-scheme cases, such as Mr C's complaint with our Service. The Investigator invited both parties to comment if they had any concerns.

Tenet responded saying that it didn't think it was reasonable for an Ombudsman to mandate use of the FCA's calculator in non-scheme cases, as alternative calculators should arrive at the same numbers using the same guidance. Tenet said it intended to continue its usual process of requesting a loss calculation from an independent actuary. The Investigator acknowledged this, but said it was ultimately for the Ombudsman to decide and direct the appropriate redress and this could include directing Tenet to use the FCA's BSPS calculator.

The case has now been passed to me to make a final decision on the matter.

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 Tenet'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.

The FCA states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable and that a transfer should only consider the transfer to be suitable if it can clearly demonstrate it is in the consumer's best interests. I'm also mindful that under COBS 9.2.1R Tenet needed to take reasonable steps to ensure that its recommendation to Mr C was suitable for him. And having looked at all the evidence available, I'm not satisfied Tenet took reasonable steps to ensure the advice to transfer was suitable for Mr C or that it was in his best interests.

Financial viability

Tenet carried out a transfer value analysis report ('TVAS'), as required by the regulator, showing how much Mr C's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield). Tenet produced two TVAS reports using the existing BSPS benefits and the BSPS2 benefits. While providing the figures for the BSPS and the BSPS2 is helpful for comparison purposes, given Mr C had already chosen to join the BSPS2, I've focused on the TVAS based on the BSPS2 benefits here.

According to the information gathered by Tenet, Mr C said he wanted to retire early. He thought he was unlikely to be able to continue working full-time in the steel industry beyond age 55, so he thought he might reduce his hours at that age before possibly retiring fully at age 58. So, the TVAS dated 26 January 2018 set out the relevant critical yields; at age 65 it was 5.03% if Mr C took a full pension and 3.90% if he took a reduced pension and tax-free cash ('TFC'). At age 55 it was 7.80% if he took a full pension and 4.68% if he took a reduced pension and TFC. The critical yield required to match the benefits provided through the PPF at age 65 was 4.02% if Mr C took a full pension and 3.78% if he took TFC and a reduced pension. At age 55, it was 6.08% if he took a full pension and 5.57% if he took a reduced pension and TFC.

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, I consider they provide a useful indication of what growth rates would have been considered reasonably achievable when the advice was given.

The relevant discount rate at the time the advice was given was 4.3% a year for 15 years to retirement and 3.1% a year for 5 years to retirement. For further comparison, the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2% a year.

I've taken this into account, along with Mr C's 'balanced' attitude to risk and also the term to retirement. Given the discount rate and the middle projection rate, if Mr C transferred out of the scheme there's a reasonable chance he could've matched the benefits available to him under the BSPS2 and the PPF if he retired at age 65. However, in Tenet's suitability report, it recognised that there was still a reasonable chance it would not be achieved. And I think there would be little point in Mr C giving up the guarantees available to him through his DB scheme only to achieve the same level of benefits outside the scheme.

Mr C was clear that he thought he would probably retire early. So, I think the critical yield figures for retiring at age 55 are more relevant. And at age 55, the critical yields were higher – Tenet conceded in the suitability report that these critical yields were less achievable. It further added that if Mr C transferred out of the scheme he would probably not be able to purchase a guaranteed income at the same level as the BSPS2 or PPF pensions. So, overall, I think Mr C 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, particularly if he retired earlier than age 65. And I think Tenet also recognised this.

However, Tenet produced various cash flow analysis reports, which it says showed that Mr C could meet his income needs throughout his retirement and on his death, he would have a large estate to pass on to his family. Nevertheless, it explained in the suitability report that this analysis wasn't guaranteed and was dependent on investment returns, which could perform more poorly than anticipated.

I've considered the relevant cash flow analysis reports. I appreciate this demonstrated Mr C's fund would last beyond his life expectancy, leaving a large sum behind for his estate, even when allowing for a 30% drop in the transfer value at the outset. But according to the cash flow details, both scenarios involve Mr C drawing down negligible sums from the transferred pension throughout Mr C's lifetime. That's because Mr and Mrs C's core expenses would largely be met by Mrs C's existing DB pension, benefits and her state pension. So, it is no surprise that the cash flow analysis demonstrates a large sum for Mr C to pass on to his estate on his death in these circumstances. However, given that Tenet's advice was partly based on Mr C being able to withdraw larger sums from his pension in the early years of his retirement until his state pension became payable, I don't think the cash flow models are an actual reflection of the circumstances the advice was based on.

Furthermore, according to the default assumptions page this was still based on assumed growth rates of between 3% for cash, up to 8.25% for equities – with the modelling being based on a default asset allocation of over 50% in favour of equities for Mr C. In comparison, the TVAS shows that if Mr C's funds grew in line with the regulator's middle projection rate, and he withdrew the same income he was entitled to through the DB scheme from age 55, his fund would be depleted at age 92 if he took a full pension and age 99 if he took a reduced pension and TFC. So, the size of the fund Mr C was able to pass on in the event of his death might not be as generous as he expected. And if Mr C's funds performed below the middle growth rate, particularly over a long period of time, I think there was a risk of depleting his pension before he died.

In summary, if Mr C transferred his BSPS benefits to a SIPP he probably could have matched the benefits provided by the BSPS2 and potentially exceeded them, if he retired at age 65. But given Mr C told Tenet he wished to retire early, from around age 55, then I think he was likely to be worse off by transferring to a SIPP, given the overall value of the benefits he'd be giving up. So based on the above alone, I don't think the transfer was in Mr C's best interests.

However, financial viability isn't the only consideration when giving transfer advice. Other objectives might mean a transfer is suitable despite providing overall lower benefits, and Tenet has argued that Mr C had several objectives that could only have been met by transferring his pension. So, I've thought about whether Mr C's other objectives meant a transfer was still suitable for him overall.

Flexibility and income needs

In the suitability report, Tenet said that Mr C didn't think he'd be able to work full-time in the steel industry, so thought he might reduce his hours at age 55 before retiring fully at age 58. It said Mr C was likely to retire early particularly given his wife was older than him and was already retired. Tenet said Mr C wanted to be able to access his pension flexibly and control how much income he took, noting that he wasn't going to be reliant on his pension income once his state pension became payable. Tenet maintains that Mr C therefore had a need for flexibility and had specific objectives that could not have been met by joining the BSPS2.

Mr C's apparent desire to retire early is a source of contention. Mr C says that retiring at 55 was suggested by the adviser on the basis that he would never run out of money. But he said that he still didn't intend to access his pension until much later because of the existing income streams and savings he had. Tenet, however, says that it was entitled to rely on Mr C's objective of wanting to retire between the ages of 55 and 58. It says he had the opportunity to correct this if there was any misunderstanding.

I've taken account of what both sides have said on this point – but I think it's more likely than not that Mr C expressed a desire to retire early at the time of the advice, particularly given his wife had already retired and was older than him. But retiring from work and accessing a pension are not one and the same. And I also think Tenet needed to bear in mind that Mr C was still between five and eight years away from when he thought he may retire – and so his plans could've changed in the intervening years. So, while it was entitled to consider what Mr C would need from his pensions if he chose to semi-retire at age 55, it also needed to think about the potential for a change in those plans and whether Mr C had other sources of income he could use to fund the early years of his retirement. Nevertheless, I don't think it makes a difference to the outcome overall, because even if I accept Mr C wanted to retire fully as early as age 55, I don't think he needed to transfer his benefits to a SIPP to achieve this.

According to the suitability report, Mr C expressed a desire to take a lump sum from his pension in retirement, though the sum wasn't set in stone. He mentioned he'd like to restore his classic car, which might cost around £30,000. He also said he might consider purchasing a campervan which could cost between £30,000 - £40,000, although he would consider this more closely at retirement depending on his finances. Although it isn't clear what sum Mr C was seeking, it seems to me he could've had a need for at least £30,000 at retirement. Mr C also explained to the adviser that he was looking for a minimum household income of £34,000 (net) up to a maximum of £44,000 (net), which equates to a gross income of around £37,000 to £49,000 between Mr and Mrs C. So, I've considered whether Mr C could've achieved this by remaining in the BSPS2.

At the time of the advice, Tenet noted Mr and Mrs C had savings of £100,000 between them and had significant disposable income after expenses, meaning they had capacity to build further savings until Mr C retired. Mr C was also contributing 16% of his salary to his DC pension, and it was worth £31,500 at the time of the advice. Mr C expressed a desire to contribute more to his DC scheme, but even based on the existing level of contributions and without allowing for salary increases, the DC scheme could be worth in the region of £61,500 at age 55. And if I assumed modest net growth of 2% over five years, the funds could be worth in the region of £66,000 at age 55. So, it seems to me that Mr C already had sufficient savings of his own to meet his desire to fund restoring his classic car. And it's likely he'd also have enough to purchase a campervan if he chose to do so by using his remaining savings and accessing the TFC from his DC pension. So, Mr C wouldn't even have needed to use the TFC he was entitled to take from the BSPS2 at age 55 to meet his need for a lump sum.

Under the BSPS2 at age 55, Mr C would've been entitled to TFC of £85,907 and a reduced annual pension of £12,886 (which included a £1,319 bridging pension to age 65). Based on the information gathered by Tenet, Mr and Mrs C would have gross income between them totalling at least £27,700 per year when Mr C reached age 55. This included Mrs C's DB scheme income, which would've been subject to increases in the intervening years, her disability benefits and Mr and Mrs C's rental income. This meant Mr and Mrs C would've needed at least £10,000 per year to meet their minimum gross income need of £37,000 and around £22,000 per year to meet their maximum income need.

I think more than the minimum level would've been comfortably met by Mr C's BSPS2 pension, and any extra income required above this amount until Mrs C reached state pension age (when Mr C would be aged 56 and six months) could've been supplemented by Mr C withdrawing extra sums from his DC pension. Once Mrs C was in receipt of her state pension, I'm satisfied that Mr and Mrs C would have income of around £49,000 between them and Mr C would've still likely had some funds remaining in his DC pension. So, overall, I'm satisfied Mr and Mrs C would've had enough income from their various retirement provisions, benefits and properties to meet their maximum income needs until Mr C was in receipt of his state pension. And Mr C would not have needed to use his BSPS2 TFC to supplement his income at all, leaving it available to fund his travelling ambitions, or he could've saved it for the benefit of his children.

So, even in the event of Mr C retiring fully at age 55 and requiring the maximum household income, I'm satisfied Mr C could've achieved this by remaining in the BSPS2 and taking his TFC and a reduced annual pension. And using his pension in the way I've described above would likely leave funds remaining in Mr C's DC scheme and also leave his TFC of £85,907 untouched, which he could've used in any way he wanted. So, I don't think Mr C needed to transfer his pension to meet this objective.

Tenet says Mr C required flexibility, so he could adjust the income he took depending on his needs. But it seems to me that Mr C had an ongoing household income need of at least £37,000 to £49,00 per year – he didn't anticipate that overall need reducing. Instead it appears Mr and Mrs C's various income streams would exceed their needs once Mr C's state pension became payable, so Tenet may argue that Mr C needed flexibility so that he could maintain his income at the required level instead of having excess income.

But joining the BSPS2 would've provided Mr and Mrs C with a substantial amount of guaranteed income that would've helped to meet Mr and Mrs C's essential and discretionary spending. It also would've reduced their reliance on rental income in their later years. And overall, I think this guaranteed income would've allowed Mr and Mrs C to enjoy a comfortable retirement with a sufficient buffer to meet unforeseen costs if and when they arose in the future. And if Mr C felt he had too much income, he could've saved it or reinvested it for the benefit of his children/grandchildren. So, I don't think it was suitable or in Mr C's best interests to advise him to transfer his pension, exposing him to the risks of the financial markets, just to have extra flexibility that he didn't really need.

For balance, I've also taken into account Mr C's assertion that even if he retired early, from age 58, he wouldn't have needed to access his DB scheme benefits because he had other income streams. As I've said above, by the time Mr C reached age 58, Mrs C would've been in receipt of her state pension. According to Tenet's cashflow analysis and the suitability report, their combined income sources at that point would include around £16,000 per year from Mrs C's DB scheme, £8,800 from her state pension, £4,000 in disability benefits, and rental income of around £11,000. So, their income at that point was already around £40,000. I think that Mr C could've easily topped up this income as and when necessary from his DC scheme pot, meaning he could've left his BSPS2 benefits untouched until age 65 if he didn't wish to be subject to the reductions for retiring early.

So, in summary, whenever Mr C chose to retire, I think he could've met his income needs in retirement. And I think he could've deferred taking his BSPS2 benefits until age 65 if he wanted to, even if he retired early.

Death benefits

Tenet recorded that Mr C preferred for his family to benefit from a lump sum death benefit which could be passed on to his wife, children or grandchildren and that he didn't want his pension to be 'lost' on his death. Death benefits are an emotive subject and of course most people would like their loved ones to be taken care of when they die. And I'm sure that the idea of leaving a large sum to his family in the event of his death sounded attractive to Mr C, as it would to most people. But whilst I appreciate death benefits are important to consumers, and Mr C might have thought it was a good idea to transfer his BSPS benefits because of this, the priority here was to advise Mr C about what was best for his retirement provisions. And a pension is primarily designed to provide income in retirement rather than as a means of providing a legacy.

I also think the existing death benefits attached to the DB scheme were underplayed. Mr C was married and so the spouse's pension provided by the BSPS2 would've been useful to his spouse if Mr C predeceased her, even if Mr C considered that unlikely given their age difference. This pension, when added to Mrs C's own pension entitlements and other income, would've been sufficient to meet her individual needs. The spouse's pension was guaranteed and it escalated – and under the BSPS2 the spouse's pension would be calculated as if no TFC had been taken. Furthermore, this benefit was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. And if investment returns were poor, there may not have been a large sum to pass on in any event, particularly if Mr C took more out of the fund than he anticipated in the early years of his retirement.

I accept that on Mr and Mrs C's deaths the DB pension would not pay out any further benefit. But Mr C could've nominated any beneficiaries of his choosing for any remaining funds in his DC pension. And as I've said above, Mr C could've saved the remaining TFC from the BSPS2 and any extra income above his needs for the benefit of his children or grandchildren in a tax-efficient way, for example, through a trust. Mr and Mrs C also had three properties that would've formed part of their estate and provided a sizeable legacy. So, I think it's clear Mr C already had valuable death benefits through the DB scheme and he could've made other arrangements (in the ways I've set out above) to ensure that a significant part of his pension didn't die with him. And had Tenet explained to Mr C that he could meet his objective of providing extra death benefits for his family, without giving up his own guaranteed pension, I think he likely would've been satisfied with this.

If Mr C had genuinely wanted to leave further funds for his children/grandchildren, which didn't depend on investment returns or how much of his pension fund remained on his death, then I think Tenet should have instead explored life insurance more fully. It appears that Tenet did look at whole of life assurance; the suitability report mentions that a policy providing £551,406 would cost approximately £557.78 per month (before underwriting). And I have seen reference to Mr C feeling the rates would be prohibitive for him given his job. So, it appears this was discounted based on the cost and that taking out insurance wouldn't provide him with the pension flexibility he required.

Notwithstanding what I've already said about Mr C not having a genuine need for flexibility, I don't think the quotes generated presented the option of taking life assurance in a balanced way. Tenet based the quote on the transfer value of Mr C's pension benefits, so it essentially assumed that he would pass away on day one following the transfer and that isn't realistic. Ultimately, Mr C 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, Tenet should have asked Mr C how much he would ideally like to leave as a legacy, 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 SIPP justified the risk attached with Mr C transferring his pension. And I don't think Tenet did enough to highlight the value of Mr C's existing death benefits or to explore the alternatives available to him to meet this objective.

Control and concerns over the financial stability of the DB scheme

It's clear that Mr C, like many employees of his company, was concerned about his pension. He'd seen the reduction in benefits over time and was concerned this would continue – Tenet said Mr C wanted to know the pension was under his control. So it's quite possible that Mr C was leaning towards the decision to transfer because of the concerns he had about his employer and his negative perception of the changes made to the DB scheme over time.

It's well documented that this was a period of uncertainty for people like Mr C. But this only serves to emphasise the need at that time for a balanced assessment of the options available and ultimately the need for suitable advice. So it was Tenet's obligation to give Mr C an objective picture and recommend what was in his best interests.

Mr C had already chosen to join the BSPS2 and at the time the advice was given, all signs pointed to the scheme going ahead. And if Mr C's concerns about his employer's influence on his pension remained, I think it should've been explained that his employer and the pension scheme trustees were not entirely one and the same. So Mr C's employer didn't have the control over the pension Mr C thought it did. And in any event, Mr C hadn't expressed a desire to move his DC pension away from his employer – so transferring his DB scheme benefits wouldn't necessarily provide him the separation he appeared to want.

Even if there was a chance the BSPS2 wouldn't go ahead, I think that Tenet should've reassured Mr C that the scheme moving to the PPF wasn't as concerning as he thought. The income available to Mr C through the PPF was actually likely to be higher than the benefits he could obtain from the BSPS2 if he retired at age 55, and he was unlikely to be able to significantly improve on this by transferring out. Although the increases in payment in the PPF were lower, the income was still guaranteed and was not subject to any investment risk. So, I don't think that these concerns should've led to Tenet recommending Mr C transfer out of the DB scheme altogether.

I also think Mr C's desire for control over his pension benefits was overstated. Mr C was not an experienced investor and I cannot see that he had an interest in or the knowledge to be able to manage his pension funds on their own. Indeed, the recommendation letter suggested he would remain reliant on professional advisers. So, I don't think that having control was a genuine objective for Mr C – it was simply a consequence of transferring away from his DB scheme.

Summary

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

And ultimately, I don't think the advice Tenet gave to Mr C was suitable. He was giving up a guaranteed, risk-free and increasing income under the BSPS2. By transferring, he was likely to obtain lower retirement benefits overall and in my view, there were no compelling reasons which would justify a transfer and outweigh this. Mr C shouldn't have been advised to transfer out of the scheme in order to retire at 55 when he could've achieved this by remaining in the scheme. And I don't think the possibility of having too much income in the future meant he had a genuine need for flexibility, such that he should place all of his retirement funds at risk. And in my view, the potential for death benefits that could be passed on to family other than his spouse wasn't worth giving up the guarantees associated with Mr C's DB scheme. So, I think Tenet should've advised Mr C not to transfer to a personal pension.

Tenet says that around 40% of Mr C's pension under the BSPS2 wasn't subject to escalation in payment so his pension wasn't fully protected against inflation. But joining the BSPS2 would've still offered him a degree of protection against the impact of inflation without him having to take any risk with his pension funds. Whereas by transferring, he was subject to the impact of inflation on his funds and market risk. So, I don't think that should've been a significant consideration when making the recommendation.

I appreciate at the time of the advice that Mr C thought he would likely retire fully by age 58, but that was still around eight years away and I think there was always the chance that could change. For most people, early retirement means a significant drop in income. And that would dramatically reduce most individuals' spending power and lifestyle choices. So, when faced with that prospect at an early retirement age, many people choose not to retire. Instead they opt to continue working to support their current and future lifestyle options.

I'm also mindful that Mr C had already opted to join the BSPS2. I accept it could have been to Mr C's benefit to instead move to the PPF if he was certain to retire early around age 55. But given I don't think that was a certainty, 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 very early retirement. And by maintaining his choice to join the BSPS2, Mr C would've retained the ability to transfer out of the scheme nearer to his retirement age if he needed to. Also, Mr C 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 C chose to do so). The annual indexation of his pension when in payment was also more advantageous under the BSPS2 compared with the PPF. So, I think Tenet should've advised Mr C to maintain his choice to join the BSPS2.

Tenet may argue Mr C would have transferred even if Tenet advised against it, either by insisting with Tenet or by using another independent financial adviser. It says that it provided Mr C with extensive information about the risks of transferring and what he'd be giving up if he proceeded with the transfer. So, ultimately it believes Mr C made an informed choice to proceed with the transfer and he would've transferred in any event.

I accept that Tenet disclosed the risks of transferring to Mr C, and provided him with a significant amount of information in the suitability report. But ultimately it advised Mr C to transfer out, and I think Mr C relied on that advice.

I've seen nothing to make me think Mr C would've insisted on the transfer going ahead if Tenet had advised him against it or that he would have approached another independent financial adviser. Mr C had already chosen to join the BSPS2, so had already shown a willingness to stay in the DB scheme. I'm also mindful he was an inexperienced investor, with a balanced attitude to risk. And his BSPS pension accounted for the majority of his retirement provisions. So if Tenet had provided Mr C with clear advice against transferring out of the BSPS that explained why it wasn't in his best interests, and how he could meet his objectives by remaining in the scheme, I think Mr C would have accepted that advice.

Overall, I'm not persuaded that Mr C's preference for flexibility and control was so important that he would've insisted on the transfer knowing that a professional adviser, whose expertise he had sought out and was paying for, didn't think it was suitable for him or in his best interests. And if Tenet had explained Mr C was unlikely to exceed the benefits available to him through the BSPS2 if he transferred out, and that he could meet his income needs in retirement whenever he decided to retire, without risking his guaranteed pension, I think that would've carried significant weight.

So, overall, I think Mr C would've maintained his decision to join the BSPS2 if he'd been advised to do so. And so Tenet should compensate Mr C for the unsuitable advice, in line with the regulator's rules for calculating redress for non-compliant pension transfer advice.

And it is the benefits available to him through the BSPS2 at age 65 that should be used for comparison purposes, as I don't think there is sufficient evidence to persuade me that Mr C would've taken his DB scheme benefits any earlier than age 65 had he been advised to stay in the BSPS2. That's because, as I've demonstrated above, I think Mr C had sufficient other means available to him to retire early, so I don't think he would've needed to access his BSPS2 benefits to achieve this.

In order to calculate the redress, I'm directing Tenet to use the FCA's BSPS-specific redress calculator. I know that Tenet does not feel that it is within my remit to make such a direction, and says it intends to continue using an independent actuary. But it is for me to determine what redress would be appropriate here and that can include a direction to use the FCA's calculator.

The FCA developed the calculator as part of the BSPS consumer redress scheme, to ensure consistency in the calculations and to ensure consumers receive fair and quicker redress. It also reduces the burden on firms by removing the need for actuarial support in most calculations. While the calculator was developed as part of the BSPS consumer redress scheme, the FCA is also encouraging businesses to use the calculator for non-scheme cases, such as Mr C's complaint with our Service. And overall, I think it would be reasonable for Tenet to use the FCA's calculator here as the calculator output is easily understood and I think it will provide Mr C with reassurance that any redress owed to him has been calculated fairly.

Putting things right

A fair and reasonable outcome would be for the business to put Mr C, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr C would most likely have joined the BSPS2 if suitable advice had been given.

Tenet must therefore undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in policy statement PS22/13 and set out in the regulator's handbook in DISP App 4:
https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter.

Tenet should use the FCA's BSPS-specific redress calculator to calculate the redress. A copy of the BSPS calculator output should be sent to Mr C and our Service upon completion of the calculation.

For clarity, Mr C has not yet retired, and he has no plans to do so at present. So, compensation should be based on the scheme's normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

This calculation should be carried out using the most recent financial assumptions in line with DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr C's acceptance of my final decision.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, CST should:

- calculate and offer Mr C redress as a cash lump sum payment,
- explain to Mr C before starting the redress calculation that:

  - their redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
  - a straightforward way to invest their redress prudently is to use it to augment their DC pension
- offer to calculate how much of any redress Mr C receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr C accepts Tenet's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr C for the calculation, even if he ultimately decides not to have any of their redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr C's end of year tax position.

Redress paid to Mr C as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, Tenet may make a notional deduction to cash lump sum payments to take account of tax that Mr C would otherwise pay on income from his pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr C's likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

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

<u>Determination and money award:</u> I uphold this complaint and require TenetConnect Limited to pay Mr C the compensation amount as set out in the steps above, up to a maximum of £160,000.

<u>Recommendation:</u> If the compensation amount exceeds £160,000, I have also recommended that TenetConnect Limited pays Mr C the balance.

If Mr C accepts my final decision, the money award becomes binding on TenetConnect Limited.

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

TenetConnect Limited should provide details of its calculations to Mr C in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 12 July 2023.

Hannah Wise
Ombudsman