

The complaint

Mr G 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 G'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 (the '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 the 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 G met with a representative of Tenet in late 2017 after being referred to it by his financial adviser. Tenet gathered information about Mr G's circumstances and objectives, noting he was married with non-dependent children. It noted Mr and Mrs G had around £20,000 in savings. It also noted that Mr G had deferred benefits in the BSPS and he was also an active member of his current employer's DB scheme. Tenet recorded that Mr G had a 'high-medium' attitude to risk and hoped to retire between the ages of 60 and 67 with an annual income of £25,000.

Tenet recorded Mr and Mrs G were approaching age 55 and Mrs G was in poor health, so she was looking to retire from her job and access her own DB pension. However, the adviser noted Mrs G required £15,000 per year in retirement but her DB scheme would only provide around £6,725 per year from age 55. As this income wasn't likely to be sufficient for their needs, they were considering taking some tax-free cash ('TFC') from Mr G's pension each year to supplement their income. The adviser recorded that Mr G was a higher-rate tax payer and intended to keep working for at least another five years, so taking benefits from his DB pension wouldn't be tax-efficient. For this reason, a transfer out of the BSPS was being considered.

In February 2018 Tenet advised Mr G to transfer his BSPS benefits to a SIPP, keeping 10% of the funds in cash and investing 90% of the funds using a discretionary fund manager ('DFM'). It said this would allow Mr G to achieve his objectives, including accessing his TFC gradually each year to supplement his wife's income. It said transferring would provide Mr G with flexibility that he wouldn't have if he remained in the DB scheme.

Mr G accepted this advice and £479,862.96 was transferred from the BSPS to his new SIPP.

In 2021 Mr G contacted our Service about the advice he received from Tenet. Mr G didn't think the advice to transfer out of the BPS was in his best interests. He also raised concerns about the process employed by the person who gave him the advice. The complaint was passed to Tenet but it didn't uphold it. Tenet said the advice was suitable as it allowed Mr G to meet his objective of taking some of his TFC each year to supplement his household income. It said Mr G couldn't meet his objectives by joining the BPS2 or moving to the PPF.

Unhappy with Tenet's response, Mr G asked our Service to investigate. He said the adviser had noted things about his wife's health which weren't accurate and he feels this was used to support the recommendation to transfer out of the DB scheme. He said he took about half of his TFC entitlement because he was advised to do so but it remained in his account.

One of our Investigators was given the complaint to consider, and passed on the details Mr G had given about the inaccuracies in the fact-find and suitability report, as well as evidence from Mrs G's doctor to support this. Tenet said it would consider its response to the complaint again in light of the new information received.

Ultimately the new information led Tenet to uphold Mr G's complaint and it offered to settle the complaint in line with the regulator's redress methodology in place at the time.

In July 2022 Tenet provided Mr G with a copy of its loss calculation, which it said demonstrated Mr G had not suffered a loss as a result of the transfer. It offered Mr G £500 for the distress and inconvenience caused by the advice. However, Mr G didn't think this was fair because the actuary who had carried out the calculation had based it on him taking benefits from the DB scheme at age 55. Mr G said if he hadn't been advised to transfer he would've left his benefits until age 65 as he had no need for the TFC, as evidenced by the fact he hadn't spent any of it. The Investigator also didn't think the calculation had been carried out fairly for the same reasons.

As there was no agreement on this point, 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 G 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 G chose to have his compensation calculated under the existing rules and guidance. However, Mr G was informed that if the complaint had not been resolved by the time the new rules and guidance came into effect, the new rules and guidance would apply in any event.

In November 2022 Tenet contacted our Investigator to explain that although it maintained it was fair to calculate redress from the date Mr G accessed his TFC at age 55, it had undertaken new calculations using retirement ages of 55 and 65. Both calculations showed that Mr G had not suffered a loss, although it was still offering £500 compensation as per its initial offer.

Mr G didn't accept the offer as he said he had no reason to trust the calculations carried out by Tenet and he wasn't in a position to be able to pay someone to check it. He added that the calculation didn't seem to address the loss of growth on the TFC he'd taken, which had been sat in an account not earning any interest. Mr G also thought the £500 offered was a derisory amount given all the worry caused.

As no agreement could be reached to settle the complaint, the case was passed to me to decide.

The Investigator subsequently informed both Mr G and Tenet that if the Ombudsman considering the case decided to uphold it, they could require Tenet to calculate any redress owed to Mr G using the FCA's BSPS-specific redress calculator. Although the calculator had 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 G'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 added that it had accepted the advice was unsuitable and had calculated redress under the regulator's previous guidance in November 2022 in line with the Investigator's view on the retirement age. So, it believed that the only decision for the Ombudsman to make was whether the offer Tenet made complied with the regulator's guidance at the time. As such, it didn't think the FCA's BSPS calculator was relevant in this case as it was not available at the time it carried out the calculation.

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.

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 should first say that there is no dispute the advice Tenet's representative provided to Mr G was unsuitable. Tenet has agreed that it is required to put things right for Mr G by carrying out a loss assessment in line with the regulator's guidance. What remains in dispute here is whether the compensation Tenet has offered to Mr G for the unsuitable advice is fair and reasonable in the circumstances. However, for completeness, I agree that the advice provided to Mr G was unsuitable and will briefly set out my reasons for this.

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.

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 G was suitable for him. And having looked at all the evidence available, I'm in agreement with Tenet that the advice provided to Mr G wasn't suitable.

I say this because I don't think Mr G had any need for additional income such that he needed to start taking TFC from his pension. Based on what I've seen, Mr and Mrs G's expenditure was comfortably covered by their existing income streams, even if Mrs G retired immediately and started taking her DB pension (as she went on to do). And as was later discovered, Mrs G's health was not as had been recorded by the adviser, and so there was no justification for needing the extra income that accessing the TFC would provide. This is evidenced by the fact that although Mr G took some of TFC when he reached age 55, he hasn't spent any of it because it wasn't needed.

Overall, I don't think Mr G had a genuine need to access his TFC from his pension at the time the advice was given, which was the basis of the adviser's recommendation as it said Mr G couldn't have achieved this by remaining in the DB scheme. In the absence of this need, or any other compelling reasons to transfer out of the scheme, I'm satisfied that suitable advice would've been for Mr G to join the BPS2 instead. As such, it is fair for Tenet to compensate Mr G for the unsuitable advice according to the regulator's rules for calculating redress for non-compliant pension transfer advice.

As I've said, Tenet and Mr G agree that the advice was unsuitable, however, there are still some issues in dispute that have an impact on what constitutes fair redress for the impact of the unsuitable advice.

Tenet has said from the outset that it believes it is fair to calculate any redress Mr G might be owed based on him accessing his pension benefits at age 55, as this is what actually happened. It says Mr G took around 50% of his TFC at age 55 and assumes he did so because it was necessary to support his wife's early retirement. As such, it considers it would've also been necessary for Mr G to access his DB pension in the same way. It also noted that Mr G had removed the representative of Tenet as the servicing agent of his pension, so he did not take the TFC in June 2018 on the adviser's instruction. Lastly Tenet said it hadn't seen statements covering the entire period following the withdrawal so couldn't be certain Mr G hadn't used the funds to supplement his wife's income.

I note that Tenet still went on to carry out a calculation based on Mr G taking his benefits at age 65 instead. However, I don't believe that it has ever accepted that this is the retirement age it should use for redress purposes, it simply carried out the calculation to illustrate the point that Mr G hadn't lost out as a result of its advice, to try to resolve things informally. So, for completeness, I've considered what retirement age Tenet should use to calculate the redress.

Although Tenet has referred to the regulator's previous guidance when carrying out the calculation, as the complaint is yet to be resolved, it is the regulator's rules as detailed in

policy statement PS22/13 and set out in the regulator's handbook in DISP App 4 that should be used to calculate redress. This has replaced the previous guidance.

DISP App 4.3.16R says:

"A firm must presume that a consumer would have taken pension benefits from their defined benefit occupational pension scheme at their normal retirement age in their defined benefit occupational pension scheme or on death if their death preceded their normal retirement age."

However, DISP App 4.3.17G says:

"The presumption in DISP App 4.3.16R will be rebutted where the evidence shows that it is more likely than not that the consumer or a beneficiary would have taken benefits from their defined benefit occupational pension scheme on an alternative date. Examples of such evidence include:

- 1) the consumer has used some or all of their transfer proceeds to purchase an annuity; or*
- 2) the consumer would have taken early or late retirement benefits from their defined benefit occupational pension scheme, having regard to:*
 - a. the consumer's demands, needs and intentions at the time of the pension transfer advice (evidence from the time of the advice is more likely to be relevant if it shows that the consumer had a considered plan for taking retirement benefits early from their defined benefit occupational pension scheme)*
 - b. any information gathered by the firm subsequently about the consumer's reasons or plans for accessing pension benefits from their DC pension arrangement; and*
 - c. any evidence that demonstrates that the consumer or members of their household changed or plan to change their working pattern at a similar time to the consumer taking regular benefits from their DC pension arrangement; or*
- 3) the firm has written confirmation that the consumer considers themselves to be retired from a date which is earlier than normal retirement age."*

Tenet may argue that the above requirements are met as Mrs G did in fact start taking her DB pension benefits at age 55. And at the time of the advice, it noted that Mr and Mrs G required extra income to make up the shortfall in Mrs G's income to £15,000 per year.

It is evident that Mrs G was entitled to a reduced annual pension of £6,725 a year plus a lump sum of £20,176 when she retired at age 55. So, the recommendation was predicated on Mr G taking TFC each year of around £8,275 to make up the shortfall. However, the £15,000 the adviser recorded that Mrs G needed wasn't explored or challenged in any meaningful way. And as I've said above, Mr and Mrs G's expenses were comfortably covered by Mr G's ongoing income and the income Mrs G would receive from her DB scheme.

It also seems to have been suggested that the extra income was specifically needed to help support Mrs G through her illness. But the evidence Mr G has subsequently provided shows Mrs G was not suffering from poor health at the time. While she did go on to retire from her current job and take her DB pension, this income, combined with Mr G's salary, was sufficient to meet their household income needs. So, there appears to have been no good

reason for Mr G to take any amount of TFC from his pension at the time of the advice, as there was no need for any extra income.

This is supported by the evidence Mr G has provided, in the form of bank statements. These cover the time from the advice and show that Mr G has not used his TFC. He has also not drawn down any additional funds from his pension – he continues to work and has no intention of taking any further pension benefits until his normal retirement age.

Overall, I don't think Mr G would've accessed his pension benefits at age 55 if he had remained in his DB scheme as he had no need to access extra income. And had he taken benefits from his DB scheme, he would've had to take both TFC and an income; this would've been taxed at a higher rate so it was therefore not in his interest to do so. On balance, given Mr G continues to work and has no plans to retire before age 65, I think it is fair and reasonable for Tenet to calculate redress based on Mr G taking his retirement benefits at age 65. I think this is what would've most likely happened had Mr G been given suitable advice at the time to join the BPS2.

Tenet questions why Mr G took around £62,000 as TFC, rather than the amount the adviser recommended to meet the alleged shortfall. It says this demonstrates Mr G didn't act on Tenet's advice and it essentially confirms Mr G had a genuine need (separate from the advice given by Tenet) to access his pension at age 55.

The Investigator asked Mr G why he took £62,000, which was around half of the TFC available to him. He explained he thought this was the right thing to do, given the advice he'd received to start taking his TFC, although he had no need for it and didn't spend any of it. While it appears this withdrawal was facilitated by his ongoing adviser, which I appreciate Tenet was not responsible for, I still think Mr G took his TFC because he'd been advised to transfer by Tenet and to start taking some TFC, and because it was an option available to him as a result of the transfer. Had Tenet advised him against the transfer I'm satisfied he would not have taken his pension benefits, for the reasons I've already given.

In light of the above, Tenet should compensate Mr G 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 BPS2 at age 65 that should be used for comparison purposes, as I don't think there is sufficient evidence to persuade me that Mr G would've taken his DB scheme benefits any earlier than age 65 had he been advised to join the BPS2.

In order to calculate the redress, I'm directing Tenet to use the FCA's BPS-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 BPS consumer redress scheme, to ensure consistency in the calculations and to ensure consumers receive fair and quicker redress. Whilst the calculator was developed as part of the BPS consumer redress scheme, the FCA is also encouraging businesses to use the calculator for non-scheme cases, such as Mr G'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 G with reassurance that any redress owed to him has been calculated fairly.

I understand Mr G has concerns about the redress methodology used to compensate him for the unsuitable advice, particularly as it has previously shown that he has not lost out financially as a result. But the regulator has set out what it considers the appropriate method

of compensation to be in instances of unsuitable pension transfer advice. And I'm satisfied this method puts Mr G back, as far as possible, into the position he would have been in had he not transferred his BPS benefits. I also think that Tenet being required to use the FCA's BPS calculator will provide him with some assurance that the calculation has been carried out fairly.

I understand Mr G feels that the redress doesn't take account of the fact he withdrew TFC from his pension, and it has been sitting in his account without earning interest. I've found that Tenet should not have advised Mr G to transfer out of the DB scheme and so Mr G would not have taken the TFC had he been advised to join the BPS2. The redress methodology provides clear provisions on how to take into account withdrawals (which would include TFC) that wouldn't have happened if Mr G had remained in DB scheme. So I'm satisfied the redress methodology accounts for Mr G's concerns.

I note Mr G also doesn't think the £500 offered by Tenet fairly compensates him for the stress and worry the unsuitable advice caused him. But although Tenet initially rejected Mr G's complaint, it ultimately accepted the advice it gave him was unsuitable. So, Mr G would've known from fairly early on in the process that Tenet would be carrying out a loss assessment to ensure he hadn't been financially disadvantaged by the advice. And although it would've undoubtedly caused Mr G distress finding out that he had cause to complain, I'm mindful that it hasn't had an immediate impact on his retirement plans. Mr G is still working, and isn't yet reliant on his pension for his retirement, so it hasn't had an additional impact on his retirement planning. It also appears based on the calculations undertaken so far that Mr G hasn't been financially disadvantaged by the advice, so that should also provide him with some reassurance. So taking all of this into account, I think the £500 offered by Tenet is fair compensation for the distress and inconvenience caused.

Putting things right

A fair and reasonable outcome would be for the business to put Mr G, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr G would most likely have joined the BPS2 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 BPS-specific redress calculator to calculate the redress. A copy of the BPS calculator output should be sent to Mr G and our Service upon completion of the calculation.

Mr G 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 G'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 G redress as a cash lump sum payment,
- explain to Mr G 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 G receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr G accepts Tenet's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr G 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 G's end of year tax position.

Redress paid to Mr G 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 G 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 G'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.

Tenet should also pay Mr G the £500 it offered to compensate him for the distress and inconvenience caused by the unsuitable advice.

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 G the compensation amount as set out in the steps above, up to a maximum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I have also recommended that TenetConnect Limited pays Mr G the balance.

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

My recommendation would not be binding. Further, it's unlikely that Mr G can accept my decision and go to court to ask for the balance. Mr G 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 G in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 28 August 2023.

Hannah Wise
Ombudsman