

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 personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

Mr G is represented by a third party but for ease of reading I will refer to Mr G throughout my decision.

What happened

In 2016 Mr G's former employer offered him an enhanced transfer value (ETV) if he agreed to transfer his pension benefits elsewhere. Mr G's former employer put him in touch with an advisor called LEBG Group Limited who are an appointed representative of Tenet to discuss his pension options. Mr G then agreed to transfer his pension to a personal pension.

Tenet completed a fact-find to gather information about Mr G's circumstances at the time of the advice. In summary it found:

- He was married, aged 57 and had two dependent children
- He was retired and drawing a pension of £25,000-£30,000 per annum from a Self-Invested Personal Pension (SIPP), the current value of the SIPP was around £460,000
- His wife was working and earning a salary of around £25,000 and had a rental income of around £6,000 per annum
- His wife had a pension pot with a value of around £223,000
- Mr G and his wife also owned their own home and a rental property with no associated borrowing and £77,000 in savings
- Both Mr and Mrs G were in good health

Mr G also answered some questions to assess his attitude to risk (ATR) which was assessed to be "*high medium*".

Mr G's objectives were identified to be:

- *To retain full flexibility in respect of taking income from your pension without tying into a fixed arrangement such as the Scheme pension or an annuity.*
- *To have the potential to grow your pension fund with the aim of increasing your future retirement income.*
- *For your wife and children to be able to benefit from your pension fund in full on your death.'*

Tenet recommended to Mr G that he should move his pension benefits from the DB scheme to a Flexi Access Drawdown. The benefits of the transfer were documented as:

- Mr G being able to keep his options open, whilst investing his pension monies and being able to access his funds

- It would allow Mr G to leave the maximum death benefits for his beneficiaries should he die prematurely. The recommendation would provide a tax-free return of the value of Mr G's fund (in the event of his death before age 75).

The annual charges for the new pension totalled 1.057% of the fund value. Mr G accepted Tenet's advice and the transfer was completed.

Mr G complained in 2020 to Tenet about the suitability of the transfer advice. In summary he said the advice to move his pension fund meant he had lost invaluable guaranteed benefits and put too much of his overall pension provision at risk. Mr G also didn't think other viable options were explored.

Tenet didn't uphold Mr G's complaint. It said that its advice had been based on Mr G having considerable investment experience, and that his existing pension was providing a considerable income that met his income needs. By transferring his pension Mr G was able to take advantage of new tax rules meaning he could pass on his pension tax free to Mrs G upon his death, who would then retain full flexibility over the payments.

Mr G referred his complaint to our service. An investigator upheld the complaint and required Tenet to pay compensation. The investigator explained that Mr G did not appear to have a real need to move his pension. She also said Mr G was 57 years old and in good health so the recommendation to move Mr G's pension so that his dependents could benefit financially didn't appear reasonable at the time of the advice.

An ombudsman at this Service then issued a provisional decision. Like the investigator, he upheld the complaint. However, he also addressed the fact that Mr G now faces lifetime allowance (LTA) charges which could have been avoided if he remained in his DB scheme. So he thought Tenet should compensate Mr G for these charges too based on certain assumptions. He suggested that alternatively, if both parties preferred this, Tenet could give Mr G an undertaking to pay any actual LTA charges incurred in future. He asked both parties for further comments.

Tenet did confirm they had no further comments. Mr G said he preferred the settlement of the LTA charge now and if possible paid into his pension.

The ombudsman who issued the provisional decision is unfortunately unable to issue a final decision, so the complaint has been passed to me.

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.

In his provisional decision my colleague said the following:

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

Financial viability

The advice was given after the regulator gave instructions in Final Guidance FG17/9 as to how businesses could calculate future 'discount rates' in loss assessments where a

complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published by the Financial Ombudsman Service on our website. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor.

Mr G was 57 years old at the time the advice was given and the documents from the time of the advice show he was already retired and drawing income from a different pension. The critical yield required to match Mr G's benefits at age 60 was 16.4% if he took a full pension and 8.5% if he tax free cash (TFC) and a reduced pension.

The critical yield required to match Mr G's benefits at age 65 was 5.9% if he took a full pension and 3.5% if he TFC and a reduced pension.

The relevant discount rate closest to when the advice was given which I can refer to was published by the Financial Ombudsman Service for the period before 1 October 2017, and was 2.7% per year for 2 years to age 60, and 3.4% per year for 7 years to age 65. 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, Mr G's 'high medium' attitude to risk and also the term to possible claim dates. Mr G had very little need to risk giving up the guarantees available to him through his DB scheme only to achieve at best, a similar level of benefit outside the scheme. Mr G was highly unlikely to be able to match the benefits offered by his DB scheme at age 60, and although there was a possibility of him increasing his overall benefit by the age of 65 I think this was unlikely to be significant and there was still a risk involved.

However, he would have been able to claim a guaranteed income from the DB scheme of around £30,000 per annum at age 60, or around £37,000 per annum if he chose to wait until he reached 65 which would have further facilitated his retirement. Transferring the pension came with risks meaning capital could have been lost, compared to the guarantees his DB scheme offered. While Mr G could potentially have afforded to take the risk of transferring his pension to increase its future value I haven't seen anything to suggest he had a need to increase the value of his pension and take the risks that accompanied that decision. I considered whether there were any other objectives or considerations which justified a Transfer.

Flexibility

Mr G was aged 57 and already retired. He didn't have any immediate need to transfer his pension such as the requirement for TFC. So even though Tenet found that one of Mr G's objectives was to retain flexibility of the fund, I don't think this was necessary, and I don't think Mr G really required any further flexibility than his current arrangements allowed at the time of the advice.

The suitability report confirmed that Mr G's initial thoughts when he had received the ETV had been to retain his DB pension until age 65 so he could have a secure income stream to rely on in future. Having the DB scheme enabled him to accept the risk of a flexible drawdown strategy in a SIPP. He said he reflected on his experience having a SIPP and felt comfortable with the idea of moving his monies out of the DB scheme.

I think it's clear Mr G wanted to have some flexibility with his pension. It was recorded he ideally would like to a secure income to cover his essential expenditure and flexible income to cover his desirable expenditure.

However, he was already in a position to do exactly that by staying in the DB scheme. He could have chosen at any point to take his DB benefits to cover his essential outgoings and use his existing SIPP for flexible income when and if required. And having the guaranteed benefits from the DB scheme would have enabled him to take more risks with his SIPP if he wanted to and use this sum in any way he wanted.

By transferring out, he unnecessarily exposed all his pensions provisions to risk. Whilst his existing SIPP had obviously performed in line with what he needed; this could have changed at any point. And having all his funds in a personal pension arrangement might have meant Mr G possibly wouldn't feel as comfortable in future to take the same risks he took whilst he had the security of a DB pension available to him. So, this also could have decreased returns in future.

I think Mr G could have achieved his ideal situation of having a mix of secure and flexible income by keeping his DB scheme. I can't see that the option of using his DB income for essential outgoings rather than his SIPP was even considered.

Death benefits

Death benefits are an emotive subject and of course when asked, most people would like their loved ones to be taken care of when they die. The lump sum death benefits on offer through a personal pension was likely an attractive feature to Mr G. But whilst I appreciate death benefits are important to consumers, and Mr G might have thought it was a good idea to transfer his DB scheme to a personal pension because of this, the priority here was to advise Mr G about what was best for his retirement provisions.

A pension is primarily designed to provide income in retirement. And I don't think Tenet explored to what extent Mr G was prepared to accept a lower retirement income in exchange for higher death benefits.

I also think the existing death benefits attached to the DB scheme were underplayed. Mr G was married and had children and so the spouse's/dependent's pension provided by the DB scheme would've been useful to his spouse and dependents if Mr G predeceased them. I don't think Tenet made the value of this benefit clear enough to Mr G. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. In any event, Tenet should not have encouraged Mr G to prioritise the potential for higher death benefits through a personal pension over the security offered by the DB scheme.

Furthermore, as described above, Mr G could have chosen to preserve his SIPP by using DB for the majority of his income instead. This in turn would have left him the possibility to leave any remaining funds from the SIPP to his family if he died.

By staying in the DB scheme, his family would have benefitted from a guaranteed spouse's pension and dependants' pension if his children were still younger when he died as well as possible flexible death benefits from his SIPP.

Overall, I don't think different death benefits available through a transfer to a personal pension justified taking on more risk with his pension provisions.

Summary

I don't doubt that the flexibility, control and potential for lump sum death benefits on offer through a personal pension would have sounded like attractive features to Mr G. But Tenet

wasn't there to just transact what Mr G might have thought he wanted. The adviser's role was to really understand what Mr G needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr G was suitable. He was giving up a guaranteed, risk-free and increasing income when he didn't need to. In my view there were no particular reasons which would justify a transfer. Mr G shouldn't have been advised to transfer out of the scheme for increased flexibility, and the potential for more flexible and potentially higher death benefits wasn't worth giving up the guarantees associated with his DB scheme.

So, I think Tenet should've advised Mr G to remain in his DB scheme.

Of course, I have to consider whether Mr G would've gone ahead anyway.

I've considered this carefully, but I'm not persuaded that Mr G would've insisted on transferring out of the DB scheme, against Tenet's advice. I say this because this pension accounted for a large portion of Mr G's future retirement provision and his total pension provisions appeared to already cater for his needs. So, if Tenet had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think he would've accepted that advice. Particularly because his initial thoughts had been along the same lines.

Overall Mr G had other safer options available to him and no real need to transfer out of the DB scheme. In light of the above, I think Tenet should compensate Mr G for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

Lifetime allowance (LTA)

Tenet acknowledged that if Mr G stayed in his DB scheme and took benefits at age 65 his benefits would fall within the lifetime allowance. However, by transferring he would face lifetime allowance charges. So, he'll suffer additional charges due to Tenet's unsuitable advice. It's fair and reasonable that this additional loss is covered by Tenet as it won't be included in the usual DB transfer redress guidance.

It's impossible to say how much additional LTA charges Mr G will have to pay by transferring out of the DB scheme. It will depend on many factors like when Mr G will die, how he will use his pensions and what returns he will achieve in his SIPP and is highly complex. So I recognise that no award in this regard will be perfect and Mr G's actual LTA charges might be higher or lower in future.

However, I think it's reasonable to make an award now and bring finality to this complaint and certainty for the benefit of both parties.

I'm intending to ask Tenet to pay the following:

I'm assuming that Mr G followed Tenet's recommendation which was to crystallise the majority of his DB transfer value of around £700,000 which used up his LTA. Tenet set out in their report that the remaining amount (£14,000) would remain uncrystallised.

Uncrystallised benefits will be tested against the LTA at age 75. I think it's reasonable to assume that the uncrystallised amount of £14,000 (plus growth on it until age 75) will be tested against Mr G's lifetime allowance at age 75. The LTA might be higher than it is now or lower. In the more recent past, it increased on a regular basis, but it is currently frozen until 2026. I think for the purpose of this calculation it should be assumed that the whole amount will be subject to LTA.

I considered the regulator's medium projection rate of 5% and the recommended plan's charges of around 1%. So, I think applying an assumed net growth rate of 4% to the sum of £14,000 from the time Mr G crystallised his benefits in 2016 until he turns 75 is reasonable.

This will give Tenet the amount that is likely subject to an LTA charge. The charges will be 25% of this sum and represent Mr G's loss. So, this is the amount Mr G should be compensated for. However, it needs to be considered that the amount being paid to Mr G now can be reinvested and achieve growth until 75. So, the loss amount can be discounted with the same 4% rate for the time between Mr G's 75th birthday and the date of settlement.

LTA charges would also apply to any pension amount exceeding the crystallised funds at age 75. However, given that Mr G was recommended to take tax-free cash and take regular income from his plan, I don't think that even with growth his plan value will likely exceed the originally crystallised amount.

Alternatively, if both parties prefer, Tenet can give Mr G an undertaking to pay any LTA charges he incurs in future (not taking into account further contributions or new pension arrangements). I invite the parties' comments on this.

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

I've independently reviewed all the available evidence again. Having done so, I agree with my ombudsman colleague that the advice given was unsuitable for Mr G for the same reasons set out in the provisional decision. I don't consider there was a need for Mr G to give up valuable guaranteed benefits or that this was in his best interest.

I also consider Mr G should be compensated for expected LTA charges. Like set out in the provisional decision, the actual charge that Mr G will have to pay is uncertain and depends on several factors. The previous ombudsman asked for the parties' opinion on this and invited their comments on the possibility of an undertaking and settlement when LTA charges actually fall due. Mr G says he prefers for the LTA charges to be settled now and Tenet hasn't commented on this. I consider the assumptions made in the provisional decision are reasonable and I agree it's preferable to bring a close to this complaint by settling it now.

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 Tenet's unsuitable advice. I consider Mr G would have most likely remained in his DB scheme if suitable advice had been given.

Since the provisional decision was issued, the FCA started a consultation on their guidance for DB transfer redress. Any changes to the methodology are expected to come into effect in early 2023. The basic objective of the proposed amendments still remains to put a consumer, as far as possible, into the position they would be in if the business had advised them to remain in the DB scheme. 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 whilst the consultation takes place, but that firms should give customers the option of waiting for their compensation to be calculated in line with any new rules and guidance that may come into force after the consultation has concluded.

I thought it was fair to give Mr G the same choice. He has decided not to wait for any new guidance and for his redress to be calculated now in line with FG17/9. I am satisfied that a calculation in line with FG17/9 remains appropriate and, if a loss is identified, will provide fair redress.

1) 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.

For clarity, although Mr G was retired, he had not accessed the benefits under the DB scheme and was only in conversations with Tenet at the time of the advice because he had been offered an ETV. I don't know when Mr G would have accessed his DB pension if he had remained in it. So, compensation should be based on his normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

This calculation should be carried out as at the date of my 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 G's acceptance of the decision.

2) Pay Mr G compensation for future LTA charges calculated as described in the provisional findings. For clarity this means:

Tenet must apply an assumed net growth rate of 4% to the sum of £14,000 from the time Mr G crystallised his benefits in 2016 until he turns 75. This will give Tenet the amount that is likely subject to an LTA charge. The charges will be 25% of this sum and represent Mr G's loss. So, this is the amount Mr G should be compensated for. However, it needs to be considered that the amount being paid to Mr G now can be reinvested and achieve growth until 75. So, the loss amount can be discounted with the same 4% rate for the time between Mr G's 75th birthday and the date of settlement.

Usually I would ask Tenet to pay compensation into the pension. However, as there will already be LTA implications, further payment into a pension would add to this. I acknowledge Mr G's preference to have compensation paid into his pension. But in the circumstances I consider all compensation should be paid directly to Mr G 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.

The payment resulting from all the steps above is the 'compensation amount'. This amount must where possible be paid to Mr G within 90 days of the date Tenet receives notification of his acceptance of my decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my decision to the date of settlement for any time, in excess of 90 days, that it takes Tenet to pay Mr G.

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.

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

Where the compensation amount already exceeds £160,000, I only require TenetConnect Limited to pay Mr G 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 G the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr G.

If Mr G accepts this 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 any decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 30 November 2022.

Nina Walter
Ombudsman