

## **The complaint**

Mr D complains about the advice given by TenetConnect Limited trading as Tenet Network Services ('TenetConnect') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme, the British Steel Pension Scheme ('BSPS') to a personal pension arrangement.

## **What happened**

In March 2016, Mr D's employer announced that it would be examining options to restructure its business, including decoupling the BSPS (the employers' DB scheme) 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'). The PPF acts as a 'lifeboat' for insolvent DB pension schemes, paying compensation to members of eligible schemes for their lifetime. The compensation levels are, generally, around 90% of the level of the original scheme's benefits for deferred pensions. But the PPF's rules and benefits may differ from the original scheme. Alternatively, members of the BSPS were informed they could transfer their benefits to a private pension arrangement.

In May 2017, the PPF made the announcement that the terms of a Regulated Apportionment Arrangement (RAA) had been agreed. That announcement included that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr D's employer would be set up – the BSPS2. The RAA was signed and confirmed in August 2017 and the agreed steps were carried out shortly after.

Mr D was concerned about what the recent announcements by his employer meant for the security of his pension, so in August 2017 he sought advice from TenetConnect.

TenetConnect recorded some information about Mr D's circumstances in a fact-find. It noted that he was 53 (soon to be 54), married with no dependents. Mr D was employed earning approximately £32,000. His wife also worked and she earned around £17,000. They owned their own home, which was unencumbered. They had cash assets of around £2,000 and they had a loan of around £5,000. They indicated by ticking the relevant box that their income more than covered their monthly expenditure (no detailed income and expenditure was completed in this document.) TenetConnect also carried out an assessment of Mr D's attitude to risk, which was deemed to be '5' on a scale of 1-10.

TenetConnect produced a transfer value analysis ('TVAS') report dated 26 September 2017, which said that the critical yield - how much Mr D's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme – was 9.47% to match the full pension he'd have been entitled to under the scheme at age 65. Or to match the maximum tax-free cash and reduced pension the scheme would provide at that age, was 6.77%. To match the full pension the PPF would've paid from 65 the critical yield was 4.82% and to match the tax-free cash and reduced pension the PPF would've offered, it was 4.19%.

In October 2017, the BPS provided Mr W with an updated summary of the transfer value of his scheme benefits. These benefits had a cash equivalent transfer value ('CETV') of £436,263.27.

TenetConnect issued its recommendation in a report dated 23 October 2017. This said Mr D wanted to take an immediate cash lump sum at 55 – around £65,00 – for home improvements, to upgrade his car and pay for a holiday. It said Mr D wanted to retire at 57 and his income need in retirement was £24,000 a year of which £20,000 was for essential needs. It said this income would be met from all sources including his wife's pension due when she reached 60. It said Mr D was keen to secure the transfer value within an alternative arrangement, which would allow him to flexibly access his benefits.

TenetConnect recommended that Mr D transfer his pension to meet his stated objectives. And it recommended a pension provider and investment strategy that it said was in line with his attitude to risk.

Mr D complained to TenetConnect in 2022 about the suitability of the transfer advice. In essence, he didn't think he should've been advised to give up a guaranteed pension income.

TenetConnect replied and said that, without admission of liability, it was willing to make an offer of settlement in line with the regulatory prescribed method.

Because Mr D was unhappy with the way TenetConnect had carried out the redress calculation – he thought it was an unfair assumption that he would've accessed his benefits at 55 had suitable advice to remain in the scheme been given – he asked us to consider the matter.

One of our Investigators looked into the complaint. They thought the advice was unsuitable as Mr D wasn't likely to improve on the benefits he was already guaranteed by transferring. They said it appeared Mr D could've met his income need in retirement without transferring; he shouldn't have been encouraged to access his pension benefits early for discretionary spending – he should've been advised to wait as the tax-free cash from the scheme at age 57 would've met his needs; and flexibility could've been achieved by transferring later on once his retirement plans were clear and if flexibility was still important to him. They said Mr D should've been advised to retain his DB scheme benefits. And they said compensation should be based on a retirement age of 65 because, although Mr D accessed his tax-free cash at 55, he continues to work with no plans to retire.

TenetConnect agreed to carry out a loss calculation, which it said showed there was no shortfall to Mr D's pension i.e. he has sufficient funds in his pension to be able to replicate his DB benefits in retirement.

Because Mr D remains dissatisfied, he asked for his complaint to be considered by an Ombudsman. So, the complaint was subsequently referred to me for a final decision.

### **What I've decided – and why**

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

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 Businesses ('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 TenetConnect'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 regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, TenetConnect should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr D's best interests.

Firstly - I can see that TenetConnect has said it's not clear why this complaint needs to be considered by an Ombudsman when it's carried out a loss calculation in line with the regulatory guidance. But ultimately the complaint remains unresolved and Mr D has asked for an Ombudsman to consider his complaint as is his right. So, to bring finality to things it requires me to provide a final decision. And if I uphold the complaint, I'll award redress based on the current situation.

Having considered all of this and the evidence in this case, I have decided to uphold the complaint for largely the same reasons given by the investigator. Because I'm mindful that TenetConnect doesn't appear to have disputed the Investigator's findings and it has shown its willingness to settle the matter by carrying out a loss calculation, in the circumstances I don't see the need to address the suitability of the advice it gave to Mr D in detail. So, in summary I think the advice to transfer was unsuitable for the following reasons.

- Given the critical yields produced by TenetConnect in the TVAS report of 26 September 2017, Mr D's recorded attitude to risk score of '5', the discount rate of 3.8% for 10 years to retirement (65) and the regulator's middle projection rate, I think Mr D was always likely to receive pension benefits, from age 65, of a lower value than those he'd have been entitled to under the BSPS2 – and at best a limited opportunity to improve on the benefits available through the PPF - by transferring and investing in line with that attitude to risk (notwithstanding the critical yields were based on the BSPS benefits and not the BSPS2.) And had TenetConnect produced

analysis based on Mr D's actual target retirement age of 57, given what the TVAS noted about the critical yields for retirement at age 55 – that these were significantly higher – I think he was even more likely to receive lower benefits than either the BSPS2 or the PPF offered, if he retired early as he desired.

- For this reason alone, a transfer wasn't in Mr D's best interests.
- Mr D wanted access to his pension benefits early at age 55 and take a cash lump sum for home improvements, a car purchase and to go on holiday. But TenetConnect should not have recommended he transfer to achieve this given the nature of Mr D's planned spending. This was not essential spending, so I don't think it was in his best interest to carry this out. It strikes me that Mr D could've put this off until he retired. At 57 – his desired retirement age - the lump sum available through his DB scheme would've been sufficient to meet his capital requirement of £65,000. If Mr D didn't want to delay his spending, then borrowing the money was a reasonable alternative available to him. He could've then used his tax-free cash when he retired to repay it. I think this option was too readily dismissed by TenetConnect.
- Mr D didn't have to transfer to retire early – he already had this option available to him. He couldn't take his DB scheme benefits flexibly and adjust his income. But I'm not persuaded this was a genuine objective of his – I think it was simply a feature or a consequence of moving to a personal pension arrangement. So flexibility wasn't a suitable reason to transfer.
- I think Mr D could've met his income needs by retaining his DB scheme. According to TenetConnect he needed £20,000 a year to meet essential expenditure and he wanted £24,000. At 57, if Mr D did decide to retire (by no means certain) his income would've been higher than the reduced pension of £11,673 TenetConnect's analysis showed he'd get at age 55. This was a guaranteed and escalating income for life. While this wouldn't have met his need in full, his wife's salary of £17,000 a year would've continued. And when she retired at 60 (she was around three years younger than Mr D) she was entitled to a pension income estimated to be just over £9,000 a year. Any shortfall at this stage, likely to be small, could've been made up using Mr D's DC scheme workplace pension. They would then both have state pension income to further supplement things later on.
- Mr D may have legitimately held concerns about how his employer had handled his pension and the prospect of entering the PPF and so he wanted to take control of his pension. But it was TenetConnect's role to objectively address those concerns. At the time of the advice, all signs pointed toward the BSPS2 being established. But even if not, the PPF still provided Mr D with guaranteed income and the option of accessing tax-free cash. Mr D was unlikely to improve on these benefits by transferring. So, entering the PPF was not as concerning as he might've thought, and I don't think any concerns he held about this meant that transferring was in his best interest.

Overall, I can't see persuasive reasons why it was clearly in Mr D's best interest to give up his DB benefits and transfer them to a personal pension. And I also haven't seen anything to persuade me that Mr D would've insisted on transferring, against advice to remain in the DB scheme.

So, I'm upholding the complaint as I think the advice Mr D received from TenetConnect was unsuitable for him.

## Putting things right

A fair and reasonable outcome would be for the business to put Mr D, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr D would most likely have remained in the occupational pension scheme and opted to join the BPS2 if suitable advice had been given.

TenetConnect 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>.

TenetConnect 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 D and the Financial Ombudsman Service upon completion of the calculation together with supporting evidence of what TenetConnect based the inputs into the calculator on.

I can see that TenetConnect says it isn't sure why the Ombudsman would instruct it to use the BPS calculator in this case. It's also referred to an independent actuary's view that the Financial Ombudsman Service should not be mandating its use in non-BPS scheme cases and that alternative calculators should arrive at the same numbers.

But it is for me to determine what redress is 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. 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 BPS consumer redress scheme, the FCA is also encouraging businesses to use the calculator for non-scheme cases, such as Mr D's complaint. And overall, I think it would be reasonable for TenetConnect to use the FCA's calculator here as the calculator output is easily understood and I think it will provide Mr D with reassurance that any redress owed to him has been calculated fairly.

I think it would be helpful for Mr D to explain that the calculator uses economic and demographic assumptions to calculate how much a consumer needs in their pension arrangement to secure equivalent BPS retirement benefits that they would have been entitled to under either BPS2 or the PPF (as uplifted to reflect the subsequent buy-out), had they not transferred out.

If the calculation shows there is not enough money in the consumer's pension arrangement to match the BPS benefits they would have received, the shortfall is the amount owed to the consumer. If the calculation shows there is enough money in the consumer's pension arrangement, then no redress is due.

The BPS calculator has been developed by actuaries and is programmed by the FCA with benefit structures of the BPS, BPS2 and PPF (including the impact of the subsequent buy-out) and relevant economic and demographic assumptions which are updated regularly. This information can't be changed by firms.

The calculator also makes automatic allowances for ongoing advice fees of 0.5% per year and product charges of 0.75% per year which are set percentages by the FCA.

For clarity, while Mr D accessed his tax-free cash at 55, he has not yet retired and started drawing an income from his pension. And my understanding is that he has no firm plans to do so at present. So, compensation should be based on the scheme's normal retirement age (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 D'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, TenetConnect should:

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

Redress paid to Mr D 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, TenetConnect may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr D'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 £170,000, 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 £170,000, I may recommend that the business pays the balance.

### **My final decision**

Determination and money award: I uphold this complaint and require TenetConnect Limited trading as Tenet Network Services to pay Mr D the compensation amount as set out in the steps above, up to a maximum of £170,000.

Recommendation: If the compensation amount exceeds £170,000, I also recommend that TenetConnect Limited trading as Tenet Network Services pays Mr D the balance.

If Mr D accepts this decision, the money award becomes binding on TenetConnect Limited trading as Tenet Network Services.

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

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

Paul Featherstone

**Ombudsman**