DRN-4070582

The complaint

Mr M complains about the advice given by TenetConnect Limited ('TCL') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme with British Steel ('BSPS') to a personal pension arrangement. He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

In March 2016, Mr M'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'). Alternatively, members were informed they could transfer their benefits to a private pension arrangement.

In October 2017, members of the BSPS were sent a "Time to Choose" letter which gave them the options to either stay in BSPS and move with it to the PPF, move to 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 M was concerned about what the announcement by his employer meant for the security of his pension, so he approached TCL for advice around the same time as he would've received his "Time to Choose" letter. On 23 October 2017 Mr M met with TCL and it completed a fact-find to gather information about Mr M's circumstances and objectives. Amongst other things this recorded that Mr M was 54 years old; he was married with one financially dependent child; he owned his own home, which had an outstanding interest-only mortgage of around £100,000, but it was anticipated this would be repaid before he reached 60; he owned rental properties which provided an annual net income of £12,000; he had around £30,000 in savings; he had some credit card debt; 20% of his salary was being paid into his new workplace pension; and he wanted the option to retire at 60, although he was prepared to continue working until 61/62, on a total net income of £2,000 a month. TCL also carried out an assessment of Mr M's attitude to risk, which it deemed to be a score of 7 on a scale of 1-10.

On 26 October 2017, TCL issued a suitability report advising Mr M to transfer his BSPS benefits into a personal pension and invest the proceeds in a range of funds it deemed matched Mr M's attitude to risk - although I note reference was also made to the current market conditions and uncertainty, so it was agreed that the investment allocation should *"...start more cautiously over the next year or two."*

In summary, the suitability report said the reasons for this recommendation were to provide Mr M with the option to retire at 60 and maximise his lifestyle; to provide flexibility and the ability to choose the level of income he took from his pension; to provide better death benefits; and the security of ongoing advice.

Mr M accepted the recommendation and sometime later, around £514,000 was transferred to his new personal pension plan and invested in line with the recommendation.

In 2021 Mr M complained about the suitability of the transfer advice. Mr M said that he discovered he should've been asked a series of questions and a series of checks should've been completed before he transferred. He said that, had he been asked these questions, his decision to transfer may have been different, so he wanted this investigating.

TCL didn't uphold Mr M's complaint. In summary it said it believed the advice was suitable. It said by transferring, Mr M had a realistic prospect of achieving the necessary 4.74% annual growth required to generate his desired retirement income from age 60 to a point past his likely age of mortality. It said the performance of the recommended portfolio was such that Mr M was on track to be able to take an equivalent income to his BSPS pension and be able to leave a residual fund to his beneficiaries (albeit it said that Mr M's decision to take a tax-free cash lump sum in 2018 meant that it might not now be on track.) It said if Mr M had retained his BSPS benefits, the income available would have been lower as the fund was destined to move to the PPF and there was no prospect of leaving a legacy. It said Mr M was told about the advantages and disadvantaged of transferring and given detailed risk warnings, so he was fully aware of the implications of the transfer. It said it was satisfied the advice was suitable as it met Mr M's needs and objectives and that the relevant questions and checks were completed.

Dissatisfied with its response, Mr M asked the Financial Ombudsman Service to consider his complaint. One of our investigators upheld the complaint and required TCL to pay compensation. In summary they said there was no justification for transferring from the BSPS, when the BSPS2, in conjunction with his property rentals and his new workplace pension, would've provided Mr M with the retirement income he required. They said there was no certainty that Mr M would retire early and there was no clear need for the additional death benefits. They said Mr M didn't need to take additional risk because a large proportion of his retirement income could have been provided by a secure guaranteed income – but having now transferred he is subject to investment risk that he had no need to take.

The investigator also challenged the assessment of Mr M's risk profile – they questioned how someone recorded as having very limited investment experience came out as 7 on a risk scale of 1 to 10. But they repeated the point that Mr M had no need to take any risk because he was on-track to meet his income needs in retirement. They said suitable advice was not to transfer and they thought Mr M would've subsequently transferred to the BSPS2, since this was the closest alternative to the benefits offered by the BSPS and because it would still allow the ability for Mr M to transfer out if needed in the future.

In response to the investigator's opinion, TCL said that while it disagreed with the conclusions reached that the advice was unsuitable, it wanted to make an offer of compensation to settle the matter and it said it was willing to carry out a loss calculation.

Nevertheless, Mr M said that he wanted the matter to be decided by an Ombudsman, so the complaint was passed 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 TCL'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 for largely the same reasons given by the investigator. My reasons are set out below.

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, TCL should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr M's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

Financial viability

TCL carried out a transfer value analysis report (as required by the regulator) showing how much Mr M's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield). And I can see that TCL updated the analysis and based it on the benefits available to Mr M through the BSPS2 when they became available, which was the fair and reasonable thing to do given the timing of the advice.

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 M was 54 at the time of the advice and he indicated he ideally wanted to retire at 60. The critical yield required to match Mr M's benefits at age 60 through the BSPS2 was set out in the updated TVAS report of 14 November 2017 and was 9.26% a year if he took a full pension. No figure was produced assuming Mr M took a lump sum and a reduced pension, which strikes me as somewhat odd given the advice paperwork recorded that Mr M wanted access to a cash lump sum at retirement. The critical yield to match the benefits available through the PPF at age 60 was quoted as 7.77% per year if Mr M took a full pension and 6.85% per year if he took a lump sum 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 3.1% per year for five years to retirement. I've kept in mind that the regulator's projection rates had also remained unchanged since 2014: the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.

I've taken this into account, along with the composition of assets in the discount rate, Mr M's 7 out of 10 score for his attitude to risk (I'll talk more about this below) and also the term to retirement. In my view, there would be little point in Mr M giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme.

But here, the critical yield was 9.26% assuming Mr M took a full pension based on the BSPS2 benefits. If TCL had produced a figure based on a reduced pension, I think the critical yield would've been slightly lower than this. But I still think it would've been significantly higher than the discount rate and very close to, if not still above, the regulator's upper projection rate. Given this I think Mr M was likely to receive benefits of a substantially lower overall value than the BSPS2 at retirement, as a result of investing in line with an above average attitude to risk. In my view, Mr M would've needed to take an even greater level of risk to have even come close to achieving the level of returns required. Based on the critical yields if the scheme moved to the PPF, I don't think the position was very different here – at best I think the opportunity to improve on the benefits available was limited.

I said I'd talk more about Mr M's attitude to risk. TCL assessed Mr M as willing to take an above average risk, categorising him as an investor with a risk score of 7 out of 10. But I have some concerns about whether this was the appropriate level of risk Mr M needed to take with his pension. I accept that Mr M had investment properties, so I think it is reasonable to conclude that he was prepared and understood the concept of risk. But TCL's risk descriptor described a typical investor in the risk level 7 category as being someone who generally has *"significant experience of investment..."* But I don't think that reasonably describes Mr M. His experience of 'investment' was only in property – there is nothing recorded to indicate that he had experience of stock market-related investments, which I think it is reasonable to assume was the experience the risk descriptor was referring to.

TCL recorded in the advice paperwork that Mr M's BSPS benefits were not core to meeting his retirement income needs. I think it's likely that this view influenced TCL's assessment of Mr M's willingness to accept investment risk. But I disagree with TCL's assessment here – I think Mr M's BSPS benefits were core to his retirement provision. As I will explain later on, I think Mr M's income needs could likely be met by retaining his DB scheme benefits – a guaranteed and escalating source of income, which I think would've been important to Mr M. Mr M's other retirement income would predominantly come from his rental income – income that could not be guaranteed and so was 'at risk'. His DC workplace pension was also investment-based.

So, given this together with Mr M's broader circumstances – the fact that he was approaching the tail-end of his working life and he still had a dependent child who would likely remain so for several more years - it strikes me that Mr M did not need, and it was not appropriate for him, to take any investment risk with his pension benefits to achieve things.

For this reason alone a transfer out of the DB scheme wasn't in Mr M's best interests. Of course financial viability isn't the only consideration when giving transfer advice, as TCL indicated in its recommendation. There might be other considerations, which mean a transfer is suitable, despite providing overall lower benefits. I've considered this below.

Flexibility and income needs

One of the key reasons TCL recommended the transfer was the ability for Mr M to choose the level of income he took from his pension, provide flexibility and give unlimited access to his pension pot.

But I'm not persuaded that Mr M needed flexibility in retirement. And in any event, I don't think he needed to transfer his DB scheme benefits at this stage to achieve flexibility, if that's what he ultimately required.

Mr M was 54 at the time of the advice. And while it is clear he was beginning to think about his retirement, I'm not persuaded he had a concrete plan. The advice paperwork recorded that Mr M's ideal retirement age was 60. It also recorded that Mr M was prepared to work for longer – perhaps to 61 or 62 – should it be required. But I think that, based on what was also recorded, Mr M's eventual retirement age was to a greater extent contingent on Mr M's dependent child's decision about entering further education. The fact-find records that: .,.."*my retirement date will depend upon if he continues into further education. I would wish to support him though this process, meaning I could retire at 61/62 if he ends his education."* So it seems that the possibility existed, if Mr M's son continued into further education for example, that he might need or choose to work beyond age 62.

So I don't think there was any degree of certainty that Mr M would retire at 60 or before his scheme's normal retirement age, although I accept that he liked the idea of retiring early. And Mr M already had this option available to him – he didn't have to transfer out to achieve this. I accept Mr M couldn't take his DB scheme benefits flexibly. Although he could choose to take a cash lump sum and a reduced annual pension, Mr M had to take those benefits at the same time. But nothing here indicates that Mr M had a likely future need to take a cash lump sum and defer taking his income. The capital expenditure Mr M said he would likely make was indicated to be at his retirement age – so at the same time as he would take an income. I also haven't seen anything to indicate that Mr M had a strong need to vary his income throughout retirement – the evidence suggests his target income was fixed. And just because when his state pension became payable his income might be greater than he indicated he would need, does not of itself indicate a strong need for flexibility.

So it strikes me that 'flexibility' was simply a feature or a consequence of transferring to a personal pension arrangement rather than a genuine objective of Mr M's at the time.

Nevertheless, and importantly Mr M was contributing to his workplace DC pension scheme. And the nature of a DC scheme means this already provided Mr M with flexibility – he wasn't committed to take these benefits in a set way. TCL recorded that a total of 20% of Mr M's salary was being invested here – a combination of employer and employee contributions. So by age 60, without accounting for growth, salary increases or increases in contribution rate, this could be worth around £38,000. I think Mr M could've draw on this flexibly, as and when required and adjusted the income he took from it according to his needs.

So, I think if Mr M retained his DB pension, this combined with his new workplace pension, would've likely given him the flexibility to retire early - *if* that's what he ultimately decided.

So in any event, Mr M didn't need to transfer his DB scheme benefits at this stage to a personal pension arrangement in order to achieve flexibility in retirement. But if Mr M did in fact have a greater need for flexibility beyond that which he already had, I think this could've been explored closer to his intended retirement age. And if Mr M opted into the BSPS2, he would've retained the ability to transfer out nearer to retirement, if his needs later demanded it. I think TCL could've explained this more clearly to Mr M.

I can see the planning for retirement questionnaire completed at the time of the advice, refers to Mr M wanting access to the maximum tax-free cash possible – it recorded this was crucial. But while Mr M's intention to use a lump sum to buy a "*dream car*" was quantified at £50,000, the other things in this questionnaire such as travel, holidays and potential weddings etc weren't quantified. So without TCL knowing how much Mr M needed for these things, it wasn't in a position to conclude that the lump sum available from the DB scheme was insufficient. Mr M had cash savings of around £30,000 (he might also have been able to increase this in the years to his retirement) and he had his DC scheme which he could take lump sums from if needed. So I'm not persuaded TCL demonstrated that Mr M did genuinely need access to a cash lump sum greater than his DB scheme could provide.

Turning to Mr M's income need. The advice paperwork recorded that Mr M's total income need was £24,000 a year net. He had £12,000 a year net coming from rental income, so Mr M's pension needed to provide him with £12,000 net a year. And as I indicated earlier on, I think Mr M could've met his retirement income needs by retaining his DB scheme benefits.

Assuming Mr M did retire at age, which as I've already said was far from certain, TCL's analysis showed that if Mr M opted into the BSPS2 he would be entitled to a full pension or just over £19,000 a year. If Mr M chose to take a cash lump sum, which I think was likely based on the evidence, his starting income would be lower than this and likely somewhere around £14,000-£15,000 a year. This might not have met Mr W's income needs in full, but I think he could've used his DC pension to top up his income as required – at least until his state pension became payable. Mr M would only likely need a couple of thousand pounds a year to supplement his DB scheme income until he received his state pension – so I think there would likely be sufficient funds in his DC scheme to allow him to achieve things.

That said, I think Mr M would retire later than age 60 – as I've already said, what was recorded in the advice paperwork at the time would suggest a later retirement age was more likely. And this would mean that Mr M's starting income would be greater than that at age 60 – at age 65 it was expected to be around £25,600 a year through the BSPS2. So if Mr M did choose to retire around 61 or 62, I think it's likely that his DB scheme together with his rental income would be sufficient to meet his income needs. Mr M would also still have his DC pension scheme to draw on flexibly, as and when needed.

If the BSPS2 hadn't gone ahead, Mr M would've moved with the scheme to the PPF. And while the income Mr M would receive might be lower than the pension he'd be entitled to under the BSPS2, (although at age 60 TCL's analysis indicated a reduced pension was around £15,200 a year) I don't think it was substantially lower such that it should've made a difference to the recommendation at this time. As I've said above, any shortfall which was likely to be small could've be made up from Mr M's DC scheme.

Overall, I think Mr M could've likely met his income needs in retirement through either the BSPS2 or the PPF based on a preferred retirement age of 60. So, I don't think it was in Mr M's best interests for him to transfer his pension just to have flexibility, that I'm not persuaded he really needed.

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 M. But whilst I appreciate death benefits are important to consumers, and Mr M 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 M about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement – not as a legacy planning tool. And I don't think TCL explored to what extent Mr M 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. It was recorded that Mr M didn't want to make provision for his wife because she had her own provision. But this appears to have been accepted by TCL without any challenge or understanding of what means Mr M's wife had. I think because Mr M was married the 50% spouse's pension provided by the DB scheme would've been useful to his spouse if Mr M predeceased her. I don't think TCL made the value of this benefit clear enough to Mr M. This was guaranteed and it escalated. Under the BSPS2 the spouse's pension would also be calculated as if no lump sum had been taken. Furthermore it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. In any event, TCL should not have encouraged Mr M to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

I'm mindful too that Mr M already had lump sum death benefits available – he had his DC workplace pension and he also had death-in-service benefits which would've paid out in the event of his death before retirement. If Mr M hadn't done so already, he could nominate his wife and/or children as beneficiaries of these. But in addition to this, Mr M owned property and it was recorded that he was due to receive an inheritance of a not insignificant amount. So it strikes me that Mr M had significant wealth that he could pass on to his family upon his death in any event.

But if Mr M genuinely wanted to leave a legacy for his family / children over and above what they already stood to inherit, and which didn't depend on investment returns or how much of his pension fund remained on his death, I think TCL could've explored additional life insurance. I appreciate that the suitability report referred to a quote of £75.30 a month for a level term assurance policy with a sum assured or around £448,000 (the shortfall as TCL referred to it, or the difference between the transfer value and the lump sum return of contributions Mr M's wife would receive through the DB scheme upon Mr M's death.) This was discounted because Mr M didn't want to pay for a life policy and didn't see this as a viable option.

Firstly, basing the quote on this figure wasn't, in my view, a balanced way of presenting this option to Mr M. Basing the quote this way essentially assumed that he would pass away on day one following the transfer, and that isn't realistic. Ultimately, Mr M wanted to leave whatever remained of his pension to his family, which would be a lot less than this if he lived a long life and/or if investment returns were lower than expected. So, the starting point ought to have been to ask Mr M how much he would ideally like to leave to his family taking into account the things I referred to above that he could pass on, and this could've been explored on a whole of life or term assurance basis. And I think this would likely be cheaper to provide.

Despite this, I'm not sure why Mr M rejected TCL's quote; the monthly premium was affordable based on the £900 a month surplus income Mr M was recorded as having. To my mind, the fact this wasn't explored further might suggest that greater death benefits wasn't in fact a genuine objective of Mr M's – instead, it was simply a consequence of transferring his pension to a personal arrangement.

Overall, I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr M. And I don't think that insurance was properly explored as an alternative.

Summary

I don't doubt that the flexibility, control and potential for higher death benefits on offer through a personal pension would have sounded like attractive features to Mr M. But TCL wasn't there to just transact what Mr M might have thought he wanted. The adviser's role was to really understand what Mr M needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr M was suitable. He was giving up a guaranteed, risk-free and increasing income, whether through the proposed BSPS2 or the PPF. By transferring to a personal pension arrangement, Mr M was, in my view, likely to obtain lower retirement benefits at his preferred retirement age. And I don't think there were any other particular reasons which would justify the transfer and outweigh this. Mr M shouldn't have been advised to transfer out of the scheme just to have flexibility or the option of having access to a greater level of tax-free cash that I'm not persuaded he really needed, and the potential for higher death benefits wasn't worth giving up the guarantees associated with his DB scheme. So, I don't think it was in Mr M's best interests for him to transfer his DB scheme to a personal pension at this time when he had the opportunity of opting into the BSPS2.

So, I think TCL should've advised Mr M to opt into the BSPS2.

I appreciate that the BSPS2 hadn't been confirmed when the advice was given, but I think it was clear to all parties that it was likely to be going ahead. While Mr M indicated he might retire early at age 60, this wasn't certain at the time. So, 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 opting into the BSPS2, Mr M would've retained the ability to transfer out of the scheme nearer to his retirement age if his needs later demanded it. Also, Mr M 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 M chose to do so). The annual indexation of his pension when in payment was also more advantageous under the BSPS2. So, I think TCL should've advised Mr M to retain his DB scheme benefits and opt into the BSPS2.

Of course, I have to consider whether Mr M would've gone ahead anyway, against TCL's advice.

I've considered this carefully, but I'm not persuaded that Mr M would've insisted on transferring out of the DB scheme, against TCL's advice.

I say this because, while I accept Mr M was likely motivated to transfer when he approached TCL given the situation and wider circumstances at the time, on balance, I still think Mr M would've listened to and followed its advice if things had happened as they should have and TCL had recommended he not transfer out of the scheme.

Mr M was not, in my view, an experienced stock-market based investor or someone who possessed the requisite skill, knowledge or confidence to against the advice they was given, particularly in complex pension matters. Mr M's pension accounted for a significant portion of his retirement income and which he would need to rely on. So, if TCL had provided him with clear advice against transferring out of the BSPS, explaining why it wasn't in his best interests, I think he would've accepted that advice.

I'm not persuaded that any concerns Mr M might have had about his employer or the scheme were so great 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. So, if TCL had clearly explained this and that Mr M could likely meet his objectives without risking his guaranteed pension, I think that would've carried significant weight. So, I don't think Mr M would've insisted on transferring out of the BSPS if TCL had given suitable advice that he not do so and that he should opt into the BSPS2.

In light of the above, I think TCL should compensate Mr M for the unsuitable advice, in line with the rules for calculating redress for non-compliant pension transfer advice.

I can see the investigator also recommended an award of £300 for the distress and inconvenience the matter has caused Mr M. So I've also thought about whether it's fair to award compensation for distress and inconvenience - this isn't intended to fine or punish TCL – which is the job of the regulator. But I think it's fair to recognise the emotional and practical impact this had on Mr M. Taking everything into account, including Mr M's age and the fact he's closer to retirement, coupled with my view that I consider Mr M's retirement provision is of great importance to him given its significance in his overall retirement income provision, I think the unsuitable advice has caused him some distress. So I think an award of £300 is fair in all the circumstances.

Putting things right

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

TCL 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.

TCL 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 M and our Service upon completion of the calculation.

For clarity, Mr M has not yet retired, and he's been clear that he has no immediate plans to do so at present. In light of this and because the evidence from the time suggests Mr M was prepared to and might have to continue working beyond age 61/62, 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 M'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, TCL should:

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

Redress paid to Mr M as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, TCL 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 M'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 M 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 also recommend that TenetConnect Limited pays Mr M the balance.

TCL should also pay Mr M £300 for the distress and inconvenience the matter has caused.

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

My recommendation would not be binding. Further, it's unlikely that Mr M can accept my decision and go to court to ask for the balance. Mr M 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 M to accept or reject my decision before 20 October 2023.

Paul Featherstone
Ombudsman