

## **The complaint**

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

## **What happened**

In March 2016, Tata Steel UK Ltd announced that it would be examining options to restructure its business including decoupling the BSPS (the DB pension scheme) from the company. The consultation with members referred to possible outcomes regarding their preserved pension benefits, one of which was a transfer to the Pension Protection Fund ('PPF') – the PPF is a statutory fund designed to provide compensation to members of defined benefit pension schemes when their employer becomes insolvent. The BSPS was closed to further benefit accrual from 31 March 2017.

In May 2017, the PPF made the announcement that the terms of a Regulated Apportionment Arrangement ('RAA') had been agreed. That announcement said that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr C's employer would be set up – the BSPS2.

In October 2017, members of the BSPS were sent a 'Time to Choose' letter which gave them the 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 (and was later extended to 22 December 2017).

Mr C met with Tenet in October 2017 to discuss his pension and retirement needs. Mr C and Tenet completed a fact-find to gather information about Mr C's circumstances and objectives. This showed that he was aged 54 and married with no dependent children (they were older). Both he and his wife were employed. They owned their own home that was subject to a mortgage, and they had some savings and investments. Tenet also carried out an assessment of Mr C's attitude to risk, which it said was agreed as being five on a scale of one to ten or medium.

In respect of Mr C's pension arrangements, he had received a cash equivalent transfer value ('CETV') from the BSPS in September 2017. This showed that he had around 28 years service. He was entitled to an annual pension of about £17,000 at the date of leaving the scheme. The CETV was about £440,360. Mr C had also joined his employers new defined contribution ('DC') scheme. He was contributing 6% of his salary into this and his employer was contributing 10%.

In November 2017, Tenet advised Mr C to transfer his pension benefits into a SIPP and invest the proceeds in a range of funds that it said matched his attitude to risk. The suitability report said the main reasons for this recommendation were that Mr C wanted to retire in the next few years and he wanted some flexibility when he did this. For example, he could use this fund to 'bridge the gap' between retiring at age 55 and drawing his state pension. He

didn't want to take a reduced pension from the DB scheme, and he was worried about the future of the BPS.

Mr C complained in 2022 to Tenet about the suitability of the transfer advice. He said that the necessary critical yields were unattainable and so he thought that he may have lost out due to the transfer.

Tenet upheld Mr C's complaint and calculated compensation based on the regulators guidance at the time which was contained in FG17/9. This showed that Mr C hadn't suffered a loss due to the DB transfer.

Mr C referred his complaint to the Financial Ombudsman Service. An Investigator looked at the offer made but didn't think that it was necessarily fair. He thought that it was right that Tenet used Mr C's age 55 as his retirement date (as he retired then). But as it was clear that he wanted to retire early at the point of sale then Tenet should have advised him to join the PPF and compensation should be based on this. Our Investigator also thought that Tenet should pay Mr C £200 for the distress the advice has caused him.

Tenet disagreed, saying that the value of the PPF benefits would be very similar to the BPS2 benefits in the loss assessment. It looks like the third party it used to perform the calculation investigated this – although it's not clear if it performed a loss assessment on this basis. So, it said that it's likely that Mr C would still not have suffered a loss. And it didn't agree with the payment for distress and inconvenience, again as it said Mr C hadn't suffered a loss.

The Investigator wasn't persuaded to change their opinion, he still thought that new calculations should be made on the correct basis.

And after this the regulator has since developed, and now provides access to, a BPS-specific redress calculator. Both parties to the complaint have been informed that I'm likely to award compensation based on this.

Tenet has said that it doesn't want to perform a new calculation using the BPS-specific redress calculator this as it has already correctly calculated the loss, in line with the FCA's guidance of the time, and feels that it shouldn't have to do this again.

### **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.

Tenet said in its final response that it had investigated the suitability of the advice and now was prepared to calculate and offer compensation. So, it's reasonable to conclude that it thinks the advice it gave wasn't right for Mr C. And Tenet hasn't said that the advice was suitable for Mr C as part of the complaint.

But for the avoidance of doubt, I agree that the advice Tenet gave Mr C to transfer away his DB scheme benefits wasn't suitable for him. The critical yields, that is the amounts the new arrangement would need to grow by, are very high and so it seemed likely at the point of sale that Mr C would receive lower benefits due to the transfer. He didn't seem to need the flexibility, or changed life cover, that a personal arrangement offered. Overall, it looks like the provision he already had was the most appropriate way to meet his retirement needs. Given this I will focus in this decision on the redress method.

The aim is to put Mr C back in the financial position he would have been in at retirement had he remained in the DB scheme. As I said above the FCA has developed a calculator specifically for situations such as this. The BSPS-specific redress calculator has been developed by actuaries and is programmed by the FCA with benefit structures of the BSPS, BSPS2 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.

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

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

Our Investigator recommended that Tenet also pay Mr C £200 for the distress caused by the unsuitable advice. Mr C said that worrying about the amount of income he could take affected his mental health. And this was in the period before he made his complaint, so Tenet's initial loss calculation won't have alleviated this. I don't doubt that Mr C has been caused concern in relation to his retirement planning, in what was already a difficult time for employees of the company he worked for. And I'm conscious this wouldn't have happened but for the unsuitable advice. And so, in the circumstances, I think the award the Investigator recommended is fair.

### **Putting things right**

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

I have noted what Tenet has said about the PPF perhaps giving a similar outcome (in the compensation) to the BSPS2. But given Mr C's situation I think this is what he would likely have done, if he'd been given suitable advice. And so, this is what compensation should be based on.

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

Mr C has retired at age 55. So, compensation should be based on him taking benefits at this age.

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

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

- calculate and offer Mr C redress as a cash lump sum payment,
- explain to Mr C before starting the redress calculation that:
  - his 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 his redress prudently is to use it to augment his DC pension
- offer to calculate how much of any redress Mr C receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr C accepts Tenet's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr C for the calculation, even if he ultimately decides not to have any of his redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr C's end of year tax position.

Redress paid to Mr C as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, Tenet may make a notional deduction to cash lump sum payments to take account of tax that 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 C's likely income tax rate in retirement – presumed to be 20%. So, making a notional deduction of 15% overall from the loss adequately reflects this.

Tenet should also pay Mr C £200 for the distress and inconvenience the poor advice caused him.

### **My final decision**

I uphold this complaint and require Tenet to pay Mr C the compensation as set out in the steps above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 8 January 2024.

Andy Burlinson  
**Ombudsman**