

The complaint

Mrs M has complained about the advice she received from TenetConnect Services Limited to take out a Free Standing Additional Voluntary Contribution plan. Mrs M claims that she was mis-sold the Free Standing Additional Voluntary Contribution plan by TenetConnect Services Limited.

What happened

Mrs M worked as a teacher. She became a member of the Scottish Teachers Superannuation Pension Scheme in 1995.

Mrs M had discussions with an appointed representative of Tenet and then received written recommendations on her financial planning in a suitability letter in May 1998. Tenet's suitability letter contained recommendations on pension planning for Mrs M.

Tenet said in their suitability letter that a shortfall had been identified in Mrs M's pension planning. Tenet went on to say that this was because Mrs M was nearly age 29 when she joined the Scottish Teachers Superannuation Pension Scheme, and as a result she would not build up her maximum pension entitlement by the time she retired at age 60.

Tenet's suitability letter contained information on the options of buying added years within the Scottish Teachers Superannuation Pension Scheme and the in house Additional Voluntary Contributions (AVCs) to cover the pension shortfall they'd identified. However, Tenet discounted these options and recommended that Mrs M take out a Free Standing Additional Voluntary Contribution plan (FSAVC).

Mrs M went ahead with Tenet's advice and took out a FSAVC with the plan provider that Tenet had recommended to her.

On 31 January 2000 Mrs M wrote to Tenet to tell them that her personal circumstances had changed. Mrs M explained that she would soon be starting maternity leave and she hoped to work on a job share basis when she returned to work at the end of her maternity leave. Mrs M said that as a result she wanted to reduce her monthly outgoings.

On 3 April 2000 the provider of Mrs M's FSAVC wrote to her to say that, as requested, they had made her FSAVC paid up with effect from 1 March 2000. The letter went on to say: *"The units already allocated to your policy will continue to participate in the performance of funds."*

However, the charges described in the policy conditions will still apply. This will mean that the initial units held will continue to be cancelled at a rate of 0.5% a month”.

Tenet gathered updated fact find information for Mrs M at the end of 2000. Mrs M signed the fact find that was completed by Tenet on 20 December 2000. This fact find recorded that Mrs M was then working in a “*part-time job share*”.

In early 2023 Mrs M complained to Tenet, via a claims management company, about the advice that she’d received from Tenet to take out a FSAVC. Tenet responded to Mrs M’s complaint in February 2023.

In their response Tenet said that they thought that Mrs M’s complaint was time barred.

However, Tenet did go on to explain that they had still reviewed Mrs M’s complaint and had concluded that the FSAVC was not mis-sold to her. As a result, Tenet didn’t uphold Mrs M’s complaint.

Mrs M wasn’t happy with Tenet’s response. She therefore brought her complaint to the Financial Ombudsman Service. One of our Investigators reviewed Mrs M’s complaint and concluded that the complaint was not time barred. They therefore also reviewed Mrs M’s complaint, which they upheld.

Tenet didn’t agree with the Investigator’s view and asked that the complaint be brought to an Ombudsman.

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 have already explained in a separate decision why I don’t think Mrs M’s complaint is time barred. I will therefore now address Mrs M’s complaint against Tenet.

When Tenet advised Mrs M in May 1998 the Tenet adviser was acting as an independent financial adviser (IFA) rather than a tied agent of a specific product provider. IFAs were required to follow the Financial Intermediaries, Managers and Brokers Regulatory Association (“FIMBRA”) rules.

In 1988 FIMBRA said that an adviser should:

- not make a recommendation unless they believed, having carried out reasonable care in forming its belief, that no transaction in any other such investment (of which they ought reasonably to be aware) would be likely to secure the objectives of the consumer more advantageously, and
- take reasonable care to include in any recommendation to a person, other than a professional investor, sufficient information to provide that person with an adequate and reasonable basis for deciding whether to accept the recommendation.

When Tenet wrote to Mrs M in May 1998, they said that Mrs M had a shortfall in her pension provision. Tenet recommended a FSAVC as the solution to help make up the shortfall that they’d identified.

Therefore, following the FIMBRA rule above, I think Tenet should only have recommended the FSAVC if they believed that no other recommendation would meet the objective of

making up Mrs M's pension shortfall more advantageously.

In addition, I think that Tenet needed to provide Mrs M with sufficient information that would have allowed her to make an informed decision on whether she should go ahead with Tenet's recommendation.

In May 1996, so before Tenet gave advice to Mrs M, the regulator issued Regulatory Update 20 (RU20), codifying the procedures it expected IFAs to follow in future sales. It reiterated what FIMBRA had already said, that the IFA should establish what in-house alternatives to an FSAVC plans were available and discuss the specific differences between them when making their recommendation.

It said the discussion should include:

- the difference in charges and expenses between the FSAVC and AVC
- the choice of investments
- the availability of added years and the number of years that could be purchased
- the degree of personal control and privacy
- the age at which benefits could be taken
- the degree of portability on changing jobs or becoming self-employed.

The more general introduction to the article (RU20), mentioned the tax treatment of contributions and benefits, employers being willing to match or top-up benefits and the ability to provide additional life cover. The article also refers to lower charges under an in-house AVC in general terms. It said:

Charges under in-scheme AVCs will usually be lower than those under FSAVCs, reflecting economies of scale, rebated commission or a contribution to administration expenses by the employer. Of all the differences between the two routes, this is likely to exert the greatest impact on which route would offer the greater benefits to the client."

In their suitability letter of May 1998 Tenet did set out information about the option of Mrs M buying added years in the Scottish Teachers Superannuation Pension Scheme, as well as the in house AVC plan available.

With regards to the information on buying added years in the Scottish Teachers Superannuation Pension Scheme, Tenet provided information on three ways in which she could buy added years, setting out an estimate of the costs involved with each of these.

Tenet didn't recommend that Mrs M take the option of buying added years to make up this shortfall, but I don't think that there was any explanation in the suitability letter of why Tenet decided not to recommend this option to her. Instead, I think that only information is provided.

Tenet then went on in their suitability letter to set out information on the in house AVC option that was open to Mrs M. In this section Tenet say that they discussed the in house AVC option and discounted the deposit and unit linked investment route, but I think that there isn't any explanation from Tenet of why these investment options were discounted.

Tenet then provide some detail on how with profits investment works and then recommend

that Mrs M set up her FSAVC investing in with profits.

At the end of this section of their suitability letter, where Tenet had given Mrs M information on how the in house AVC worked, Tenet said: *“All of the above holds true for Freestanding Additional Voluntary Contribution Plans with additional benefits in the form of confidentiality and portability”*.

Tenet then went on to explain why they had recommended a with profit FSAVC to Mrs M. In this section of the suitability letter Tenet said:

“I looked at a variety of providers including (three different providers) however (Mrs M’s FSAVC provider) was chosen because of their excellent track record and competitively priced product. Another advantage is that should you change employer where there is an occupational scheme in place the FSAVC plan can continue.

Should you decide to leave early the FSAVC benefits (which are paid out as pension only and no cash sum) can be taken at any time between age fifty and seventy-five provided that you are not contributing to an occupational scheme to which that Freestanding AVC relates.

Early retirement is entirely at the discretion of your employer however should your employer make you wait until age 60 before paying the scheme benefits, the FSAVC plan benefits may be taken.

The same scenario for an in house AVC with (in house AVC provider) would result in you having to wait to take the benefits at the same time as the main scheme.”

The suitability letter then goes on to say:

“The aforementioned reason of competitive pricing illustrated through charges/ expense deductions can be better summarised as follows.

The illustration from (in-house AVC provider) based on your gross premium of £51.95 shows at 9% growth per annum to age 60 a projected fund of £64,600 producing a pension of £5,760 per annum. If the plan runs the course and distance total actual deductions will be £8370. Putting it another way, this would have the same effect as bringing the investment growth used from 9% a year down to 7.6% a year. The effect of the total deductions could amount to £19,400

A similar premium with (Mrs M’s FSAVC provider) shows at 9% growth per annum to age 60 a projected fund of £69,600 producing a pension of £6,170 per annum. If the plan runs the course and distance total actual deductions will be only £2,780. In this case it would have the same effect as bringing the investment growth used from 9% a year down to 8% a year and the effect of the total deductions could amount to £14,000.

The (in house AVC provider) do however have improved transfer values in the early years.”

Tenet have said that the recommended FSAVC was a *“competitively priced product”*. Tenet had given Mrs M information based on illustrations they’d obtained from both the in house AVC provider and their recommended FSAVC provider, at 9% growth per annum. Based on these illustrations Tenet say that they summarised what the effect of total deductions could be if either plan ran its course, as detailed above.

But I don’t think that this was sufficient to meet the requirement to provide Mrs M with the difference in charges and expenses between the FSAVC and AVC as set out in RU20 above.

To meet this requirement, I think that Tenet needed to give Mrs M detailed information on the actual charges and expenses that applied to the FSAVC that they recommended to her. But I don't think that this detail is in Tenet's suitability letter.

Similarly, I think that Tenet also needed to set out information on the actual charges and expenses that applied to the in house AVC, and then have given Mrs M a comparison of these against the recommended FSAVC. Again, I don't think that Tenet did set out this information. Instead, they quoted a figure for total deductions based on the illustrations that they'd obtained, but I don't think that they set any meaningful detail of the actual monthly and yearly charges and expenses applying to either contract.

Tenet have also said in their suitability letter that should Mrs M retire early then she could take her FAVC benefits before she took her main scheme pension. But I cannot see any evidence in the information collected by Tenet which showed that Mrs M was considering early retirement. Instead, the suitability letter prepared by Tenet refers to Mrs M retiring at age 60.

Tenet also refer to their recommended FSAVC giving Mrs M the "*additional benefits in the form of confidentiality and portability*".

With regards to confidentiality, Mrs M's FSAVC provider would have needed to notify the Scottish Teachers Superannuation Pension Scheme that she had joined the FSAVC. Therefore, I don't think that Mrs M could keep confidential that she was paying into a FSAVC. I have also not seen any evidence to show that confidentiality was a priority for Mrs M.

I've also not seen any evidence to show that Mrs M had set up the FSAVC so that she could retire early and wanted to keep this confidential from the Scottish Teachers Superannuation Pension Scheme or her employer. Instead, Tenet have recommended that Mrs M take out a FSAVC because they say that she will have a shortfall in her pension when she reaches her normal retirement date, not because she wanted to retire early.

With regards to portability, then I think that if Mrs M had changed her job, then she would have been able to continue saving into her FSAVC, provided she was a member of her new employer's occupational pension scheme.

Mrs M worked as a teacher, and I have not seen any information or evidence gathered by Tenet which showed that she was thinking of changing her job. Also, if Mrs M did have a new employer, then the new employer may have offered an in house AVC on advantageous terms.

Also, I think that some in house AVC don't impose penal terms if the in house AVC has to be discontinued because of a change in employment. I have not seen any analysis that Tenet completed to identify if this was the case with the in house AVC available to Mrs M.

However, as I've said above, Tenet did say "*The (in house AVC) do however have improved transfer values in the early years.*" I think that this is indicating that the in house AVC available to Mrs M didn't impose penal terms if she had to stop her monthly contributions.

I therefore think that on balance, and given Mrs M's circumstances at the time that she was advised by Tenet, there was no evidence to show that confidentiality and portability would have been a priority for her. I also don't think that early retirement was a priority for Mrs M at the time that she was advised by Tenet.

Therefore, I think that as set out in RU 20 above, charges and costs are "*likely to exert the*

greatest impact on which route would offer the greater benefits to the client”.

As I've said above, I don't think that Tenet set out sufficient information for Mrs M to enable her to understand the differences in charges and expenses between the FSAVC recommended by Tenet and the in house AVC option available to her. If Tenet had completed a full analysis of the difference in charges and expenses and the analysis had identified that in house AVC was in Mrs M's best interests, then Tenet should have recommended this option to her.

I am therefore upholding Mrs M's complaint.

Putting things right

Tenet should undertake a redress calculation in accordance with the regulator's FSAVC review guidance, incorporating the amendment below to take into account that data for the CAPS 'mixed with property' index isn't available for periods after 1 January 2005.

The FSAVC review guidance wasn't intended to compensate consumers for losses arising solely from poor investment returns in the FSAVC funds, which is why a benchmark index is used to calculate the difference in charges and (if applicable) any loss of employer matching contributions or subsidised benefits.

In our view the FTSE UK Private Investor Growth Total Return Index provides the closest correlation to the CAPS 'mixed with property' index. So, where the calculation requires ongoing charges in an investment-based FSAVC and AVC to be compared after 1 January 2005, Tenet should use the CAPS 'mixed with property' index up to 1 January 2005 and the FTSE UK Private Investor Growth Total Return Index thereafter.

If the calculation demonstrates a loss, the compensation amount should if possible be paid into Mrs M's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mrs M as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid in retirement. 25% of the loss would be tax-free and 75% would have been taxed according to Mrs 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.

My final decision

My final decision is that I am upholding Mrs M's complaint against TenetConnect Services Limited and TenetConnect Services Limited now need to compensate Mrs M as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 17 October 2023.

Ian Barton
Ombudsman