DRN-4549121

Financial Ombudsman Service

The complaint

Miss C complains TenetConnect Limited (trading as Tenet Network Services) ("Tenet") mis-sold her an investment bond. She says she wasn't correctly advised of the tax implications of withdrawing funds if her circumstances changed. She says she is now facing a significant tax liability.

What happened

In 2016, an appointed representative of Tenet called LEBC advised Miss C to invest £50,000 into an investment bond. This was part of a wider recommendation following receipt of an inheritance. The bond was invested in a cautious fund. At the same time, she also invested funds in two other products as part of the same portfolio of advice.

In 2022, Miss C raised a complaint about the advice. As she was now a higher rate taxpayer, she discovered (following a review with another adviser) that there would be a significant tax liability if she wanted to surrender the bond. She didn't think the bond was suitable for her as this potential wasn't considered as part of the advice. She also had concerns about the other products recommended for income as she didn't have a need for income. And she complained about the fact no annual reviews were offered to her between 2018 and 2020, which she said would have recognised the issues she is now complaining about.

Tenet responded**.** It said Miss C had raised a complaint that was outside of the time limits that this service follows. But it also provided the following comments on the merits of the complaint. In summary it said:

- The bond was recommended taking into account Miss C's circumstances at the time and the other funds available to her. Her objectives made it clear that she was looking to invest money over the medium to long-term and had ample access to other funds if needed. Miss C confirmed she was a basic rate taxpayer and was likely to remain so. Taking all of the available information into account, Tenet does not agree she was mis-advised in relation to the bond or that the restrictions regarding withdrawals were not made clear to her.
- The investment bond was invested in a cautious fund, which utilises an established smoothing process, which aims to even out short-term market volatility. This fund choice was appropriate for someone looking for steady and consistent growth and was based on Miss C individual risk profile at the time of advice, of 'low medium'.
- Miss C's income tax status is recorded in the suitability report as follows, "...you are a basic rate taxpayer and are likely to remain so." There is no record on file that she disclosed her prediction of a change in income tax banding to the adviser at the time. It wasn't reasonable for the adviser to anticipate a change in her income tax status without being notified. The recommendation to invest in the bond was suitable for a basic rate taxpayer.

Miss C didn't agree with the outcome, so referred her complaint to this service for an independent review.

In its initial submissions, Tenet raised an objection to us considering the complaint and referred to its opinion that it had been made too late.

In October 2023, one of our ombudsmen issued a decision on this service's ability to consider the complaint. The ombudsman found the complaint was made in time, so referred it back to the investigator to consider the merits of Miss C's complaint.

The investigator made an assessment on the merits of the complaint. He didn't uphold it. In summary he said:

- He was satisfied Miss C had the capacity to invest. Based on her personal and financial circumstances, he found she was reasonably placed to invest some money for the medium to long term in a risk-based assets – provided these assets met her overall attitude to investment risk and investment objectives.
- Miss C's attitude to investment risk was recorded as 'low to medium'. This was a suitable level of risk based on her investment experience – as a first-time inexperience investor.
- The overall portfolio matched the risk profile Miss C was prepared to accept and overall had a diversified portfolio. He found the portfolio of advice provided to Miss C was suitable.
- In respect of the specific points about the suitability of the investment bond. He acknowledged the points raised about Miss C not being aware she was unable release the money from the bond without significant penalties. Also, that her tax position wasn't fully considered, in particular the possibility she was expected to become higher rate taxpayer sometime in the future. But he wasn't persuaded there was evidence Miss C's income was due to change or that she would require access to the money. So, he didn't find Tenet responsible for any unforeseen changes such as income changes or future plans and expenditures.
- In respect of the investments held in an 'Income Portfolio', he noted that Miss C says she did not need an income from this investment. He noted the suitability report explained this fund was also suitable for investors who have a lower risk outlook and prefer to have most of the growth on their investments from reinvested dividends and fixed interest income. This meant a large portion of her portfolio attracted returns in the form of income, which if reinvested would provide the growth. So again, he didn't find this made the advice unsuitable.
- He explained that Tenet isn't responsible for the yearly reviews in 2018, 2019 and 2020 Miss C said were missed. This was because LEBC ceased to be authorised as an appointed representative of Tenet on 31st July 2017. This meant Tenet wasn't responsible for ongoing advice and reviews, so no further comment would be made on this element of the complaint.

Miss C didn't accept the investigator's findings and asked for an ombudsman to reach a decision on her complaint. In summary she said:

- She doesn't agree her income tax circumstances were properly considered at the time of the advice. Back in 2016, the higher rate tax threshold was around £42,000. This suggests the advisor was not expecting her salary to increase by £12,000 in 5 to 10 years, or that she would retain the bond for 20+ years to be able to access the funds over time.
- It was agreed that she only came to be aware of the withdrawal liabilities when she actually wanted to withdraw funds.
- Subsequent financial advisors have since suggested to her they would not have recommended a bond to someone of her age and circumstances at the time, further highlighting there was an issue with the advice.

- The investigator didn't comment on the lack of advisor reviews, which was also a contributing factor.
- She is not convinced about the percentage split of the assets she held at time of advice, which the investigator referred to his in his assessment.

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.

While the crux of the complaint relates to the suitability of the investment bond, for completeness, I have also reviewed the overall advice. I haven't found that it was unsuitable. The other products recommended in 2016 appear to be in line with Miss C's objectives and risk profile. I note the concerns she has raised about one of the funds being designed for income. But I agree with the reasoning provided by the investigator in that while the fund had the ability to generate income, if this wasn't required then it would be reinvested for growth. So, although Miss C didn't have a need for income, this fund still met her objective for growth. I note her comments regarding the percentage splits of the assets held at the time. This information is taken from the suitability report completed as part of the advice. This is the only contemporaneous evidence I've seen that sets out her circumstances at the time, so I find it reasonable to rely on this.

Overall, I agree with the findings set out by the investigator, for the same reasons, on why Miss C was able to accept the level of risk presented, that she had capacity for loss and the overall portfolio met her objectives.

Turning to the advice to invest in an investment bond. Essentially, Miss C argues that this was an unsuitable recommendation because the adviser failed to properly consider her circumstances. Specifically, she says her future income tax position wasn't considered at the time of the advice. She suggests that it was reasonable to expect that she would become a higher rate taxpayer in the future and this means it would lead to future liabilities should she need to surrender. She became aware of this issue when she looked into surrendering the bond after she became a higher rate taxpayer a few years after the advice.

I've looked at what is reordered in the point-of-sale evidence that is available. The suitability report does mention tax. In the section relating to the bond, it explains the product gives control over how and when tax is paid with the possibility of paying no further tax on surrender (depending on your tax status at the time). It also states any liability for higher rate tax is deferred – and only on final dispersal to a higher rate taxpayer is income tax potentially payable, but for a basic-rate taxpayer, there will be no further tax to pay on surrender. In the risk warnings section, there is a note to say there may be further tax to pay on surrender if you are a higher rate taxpayer. It is recorded that a Key Features Document what also provided that gave further information on taxation. So, all of this does indicate information was provided to Miss C about the tax status of the product.

There is also some information about Miss C's circumstances regarding tax in the suitability report. I note it is recorded on a couple of occasions that she was a basic rate taxpayer. In the recommendations section for the bond, it also says *"as you are already a basic rate taxpayer and are likely to remain so."* I haven't seen that there was anything recorded about Miss C becoming a higher rate taxpayer in the immediate or near future – or that any information was provided to the adviser to suggest her circumstances were likely to change anytime soon.

I've considered the points Miss C raises about the adviser not having thought about the likelihood of her increasing her salary and becoming a higher rate taxpayer in the future.

With the benefit of hindsight, we know that she increased her salary fairly quickly and her tax status changed. But I don't think it is reasonable to say this was known at the point of advice. While it is hoped salaries would increase over time, I bear in mind tax thresholds and personal allowances are probably just as likely to – but none of these things were certain. So, I understand the point Miss C makes, but I don't think the evidence it sufficient to say the recommendation was unsuitable. In hindsight it's easier to see it as unsuitable advice, but in my view her circumstances don't indicate that moving to a higher tax bracket was imminent and something the adviser should have known about when giving advice. Warnings were given about the tax implications for higher rate taxpayers, and crucially a tax liability only becomes relevant when a surrender is made. I haven't seen that there was evidence that Miss C said she had a specific timeline for the surrender of the bond, so this casts further doubt on how the current situation could have been anticipated in 2016. I accept Miss C may well have anticipated her income increasing, but I don't think the evidence supports the recommendation was unsuitable because the advisor didn't make specific regard for her being a future higher rate taxpayer.

Miss C has mentioned that if he financial reviews that were due had taken place between 2018 and 2020, the issue of her tax status may have been uncovered. I accept, if the reviews took place, it is possible a strategy could have been put in place to limit her tax liability. But as mentioned by the investigator, I am unable to consider the complaint points about the reviews not taking place because Tenet isn't responsible for this (as the appointed representative agreement between LEBC and Tenet had ended in 2017). But I do acknowledge the reasons for the arguments she puts forward here.

It follows that I don't find Tenet is responsible for unsuitable advice in 2016 – and I therefore don't require it to do anything further.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 16 February 2024.

Daniel Little
Ombudsman