DRN-4154681

The complaint

Mr H complains about the advice TenetConnect Limited ('Tenet') gave to him to transfer the benefits from his defined-benefit ('DB') occupational pension scheme, the British Steel Pension Scheme ('BSPS') to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

Professional representatives have helped Mr H to bring this complaint. But, for ease of reading, I will refer to the representatives' comments as being Mr H's.

It was Tenet's appointed representative, rather than Tenet itself, which gave Mr H advice. But as Tenet is responsible for replying to the complaint I will only refer to it within this decision.

What happened

In March 2016, Mr H'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 H'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.

In July 2017 the BSPS provided Mr H with a summary of the transfer value of his scheme benefits, which at that time was £353,354.

Mr H approached Tenet for advice concerning his pension in August 2017. Tenet conducted a fact-find with him. It noted that he was 48 years old and married to Mrs H who was 54. They had one dependent daughter. They were both working. They owned their home which was valued at £300,000. They had investments totalling £20,300. They were paying £400 a month into an ISA. They also had savings of £1,800. They had an outstanding loan for around £9,000 which was due to be repaid before Mr H reached 55 years old. Mr H had relatively recently started paying into his employer's defined contribution ('DC') pension scheme. Together he and his employer were contributing a sum equal to 12% of his salary into that. Mrs H had her own DC pension with a pot value of around £18,600. Tenet recorded that Mr H had a balanced attitude to risk.

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.

Tenet obtained a transfer value analysis (‘TVAS’) report showing how much Mr H’s pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield). Tenet then produced a Financial Planning Report (‘suitability report’) summarising its recommendation on 5 November 2017. In brief it recommended Mr H transfer his DB scheme benefits to a named personal pension. It said that doing so would:

- Allow Mr H to leave the full fund to his family in the event of his death.
- Give him flexible access to his pension fund in retirement from his preferred retirement age of 55.
- Secure the fund under his control going forward.

Mr H accepted Tenet’s recommendation and transferred his DB scheme funds to the named personal pension.

Mr H complained to Tenet in 2022 that its advice might not have been suitable for him. Tenet didn’t accept liability but said it was prepared to carry out redress calculations to establish if Mr H had lost out as a result of the transfer. Before it had done so Mr H referred his complaint to the Financial Ombudsman Service. Tenet then withdrew its offer to calculate redress.

One of our Investigators looked into the complaint. He didn’t think Tenet’s advice was suitable for Mr H. So, the Investigator said Tenet should establish if Mr H had suffered a loss as a result of its unsuitable advice. He also said it should pay Mr H £200 for his distress and inconvenience because of its unsuitable advice.

Mr H told us that he had a health condition which was affected by Tenet’s advice. Our Investigator asked if Mr H had evidence to demonstrate that. Mr H didn't reply to that point.

Tenet didn’t agree with our Investigator’s complaint assessment. It said that its cash flow models showed that Mr H could meet his objectives of retiring at age 55 by transferring.

Our Investigator wasn’t persuaded to change his opinion. He referred the matter for an Ombudsman’s review.

The Investigator subsequently told both Mr H and Tenet that if the Ombudsman considering the case decided to uphold it, they may require Tenet to calculate any redress owed to Mr H using the FCA’s BSPS-specific redress calculator. The Investigator invited both parties to comment if they had any concerns.

Tenet responded saying it didn’t think it was reasonable for an Ombudsman to mandate use of the FCA’s calculator, as alternative calculators should arrive at the same numbers using the same guidance. Tenet said it intended to continue its usual process of requesting a loss calculation from an independent actuary. The Investigator acknowledged this, but said it was ultimately for the Ombudsman to decide and direct the appropriate redress and this could include directing Tenet to use the FCA’s BSPS calculator.

Mr H has recently told us that although he will turn 55 this year he has no concrete plans to retire at present.

The case has now been passed to me to make a final decision on the matter.

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 B'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, Tenet should have only considered a transfer if it could clearly demonstrate that it was in Mr H's best interests.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for broadly similar reasons to those our investigator gave.

Reasons for my decision

Tenet obtained a TVAS report which showed the relevant critical yields to match the benefits from the BSPS and the PPF. It did so for several scenarios including if Mr H took early retirement at age 55. I think it's worthwhile pointing out that Tenet was aware that its figures would not be entirely accurate. Tenet commented in its suitability report that the BSPS trustees intended to issue reviewed CETVs (to reflect the RAA taking effect). That hadn't happened at the point Tenet obtained its TVAS and it didn't adjust the figures after the trustees had provided updated calculations. But, it said Mr H was happy for it to give its advice based on the original figures.

Further, by the time that Tenet gave its advice Mr H should have received his "time to choose" letter which would have set out his entitlement from the BSPS2. But Tenet doesn't appear to have obtained a copy of that or if it did it didn't refer to it. Tenet's TVAS analysis was based on the BSPS benefits. But remaining in the BSPS wasn't an option for Mr H. He would have had to either allow his pension to move to the PPF or opt to join the BSPS2. But as Tenet didn't show BSPS2 figures, or the critical yields required to match those sums, I don't think it gave Mr H all the information he needed to make a fully informed decision.

In any event, given what we know about the BSPS2, I think the critical yields to match the benefits the BSPS2 would have provided from age 65 were likely to be between those of the BSPS and the PPF. But, as it didn't provide those figures, I've instead referred to the figures it did show – which are those from the BSPS – below.

At age 65, the critical yield to match the BSPS benefits were 7.04% if Mr H took a full pension and 5.55% if he took a tax free cash ('TFC') lump sum and a reduced pension. The critical yields to match the PPF benefits were 4.05% and 3.69% respectively. At age 55 the critical yields to match the BSPS benefits were 12.74% for a full pension and 9.06% for TFC with a reduced pension. The critical yields to match the PPF benefits at age 55 were 7.82% and 7.06% respectively.

It's notable that Tenet's suitability report said it was unrealistic that the critical yields at a age 55 could be met. Similarly, at age 65 it said it was likely that the critical yields would not be achieved. In other words, Tenet recognised that transferring would be unlikely to allow Mr H to match the benefits from his DB scheme.

To put this into context one reasonable method of looking at likely growth rates is a measure called the discount rate, which we used to publish on our website. For Mr H the appropriate discount rate was 3.3% for retirement at age 55 and 4.3% for retirement at age 65. So given the lowest critical yield at age 55 was 7.06% and considering Mr H's balanced attitude to risk, there was no real prospect of those yields being met at age 55.

There was a chance that Mr H could match the scheme benefits at age 65 by transferring, particularly if he'd allowed his benefits to move to the PPF. But there would be little point in Mr H giving up the almost entirely risk-free benefits available to him through the DB scheme only to achieve a similar level of benefits outside the scheme. And unless his personal pension grew consistently at the discount rate or higher, in real terms he was likely to be worse off by transferring out of his DB scheme.

Further, as I've said above, Tenet itself recognised Mr H would be unlikely to match the benefits from his DB scheme by transferring, at any age. So I don't think a transfer out of the DB scheme was in his best interests.

Of course matching the DB scheme income isn't the only consideration when giving transfer advice. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I've considered this below. When doing so I've been mindful that Tenet's role was to find out what Mr H's wants and needs were and why. Its role wasn't simply to do what he wanted without appropriate analysis and challenge of his motives for doing so.

Tenet said its cash flow models showed that transferring would allow Mr H to retire at age 55. It told us that he wouldn't be able to do that by remaining in the DB scheme. I've considered the relevant cash flow analysis reports. I appreciate these show that Mr H's personal pension fund could last beyond his life expectancy. But Mr H could have met his outgoings while remaining in the DB scheme.

Tenet's cash flow models showed that Mr and Mrs H needed an income of £23,623 a year in 2017. But that includes tax and national insurance contributions of £5,193 a year from Mr and Mrs H's employment. They wouldn't have those burdens when Mr H was 55 if they had both stopped working. Further Mr and Mrs H were repaying a loan at £2,628 a year. But they were due to fully repay that before Mr H reached age 55. So that would reduce their income needs further to £15,802 a year. Indeed, Tenet's cash flow models reflect this income need. One such model allows for default inflation of 2.5%, which, when applied to an income of £15,802 in 2017 would mean an income requirement of £18,784 when Mr H turned 55. And that is the amount that one of Tenet's cash flow models shows Mr H taking as an income at that age. A second model shows Mr and Mrs H taking a slightly higher sum of £18,945 from age 55. It's not clear to me why the sum increased as it did. But Mr H could have achieved that income level while remaining in the DB scheme.

The BSPS would have paid Mr H a yearly pension of £11,893 at age 55. If Mr and Mrs H had required income of £18,945, that means they would have had to find a further £7,241 a year until Mrs H's state pension became payable in another six years time. So, without adjusting for inflation, they would have needed to find an additional £43,446 to support them in the intervening period. But I think they could have bridged that income gap from other sources.

At the time Tenet completed its fact-find in 2017 Mr and Mrs H had savings and investments of £22,100. And they were continuing to contribute a further £400 a month to an investment ISA. So, if they did that for the 77 months or so remaining until Mr H turned 55, then they would have added a further £30,800 to their investments. That would have increased their savings and investments to around £52,900 – without allowing for any growth. And that sum alone would cover their income shortfall.

But Mr H would also have had access to an income from another source. He was contributing to his employer's DC scheme. I understand that the contributions to that scheme were in the region of £3,072 a year and that the pot was worth around £1,500 at the time Tenet gave its advice. So, again without allowing for growth, by the time Mr H turned 55 that fund could have been worth over £21,200. It follows that Mr and Mrs H could have drawn funds from their savings and investments in order to top up their income from Mr H's DB scheme, had he remained in that. So he didn't need to transfer in order to retire at age 55.

Further I can understand why Mr H would have told Tenet that he would like to retire at age 55. But, for most people, early retirement means a significant drop in income. And that would dramatically reduce most individuals' spending power and lifestyle choices. So, when faced with that prospect at an early retirement age, most people choose not to retire. Instead they opt to continue working to support their current and future lifestyle options. And that seems to be a more likely prospect for Mr H. But there's no evidence Tenet seriously challenged his preference for early retirement at age 55. So I don't think it met its obligations to challenge his objectives in light of what he would be giving up.

Indeed its notable that Mr H told Tenet that he might work part-time at age 55 although, understandably perhaps, his plans for doing so were a little bit vague as he said he might do odd jobs locally. But, apart from remaining active and useful I think this is an indication that Mr H recognised that he may need to do additional work to top up his income if he really was to retire at age 55.

Tenet also said a benefit of Mr H transferring was that it would give him flexible access to his benefits. It's true to say Mr H couldn't have had the same level of flexible access to his DB funds as he could from a personal pension. While he could have chosen to take those early, if he'd wanted to take TFC, then he would have had to take that at the same time as drawing a regular income from his pension. Whereas the personal pension would allow him to draw down funds as he saw fit. But while I can see why that might have been an attractive prospect for him, it's not the case that he wouldn't have had any flexible access to cash if he didn't transfer.

As I've said above Mr H and his employer had begun contributing to a recently set up DC pension scheme. The nature of a DC pension means this already provided Mr H with some flexibility – he wasn't committed to take its benefits in a set way. Mr H could have taken sums from it as and when required and adjusted the income he took from it according to his needs. So, I think if Mr H retained his DB pension, this combined with his new workplace pension and his savings and investments would have likely given him flexible access to funds if that was what he needed.

In addition, if Tenet had advised Mr H to join the BSPS2 and he'd later decided he needed greater flexibility than the scheme provided, then he could have chosen to transfer from that scheme nearer to his retirement age. I appreciate that the CETV available from the BSPS2 might have been different to the sum payable in 2017, but that wasn't a justifiable reason to recommend that he should take action that wasn't in his best interests. And, if he'd joined the BSPS2 then I think this was something that he could have explored closer to his intended retirement age; it wasn't a decision he needed to make straightaway.

Tenet also said a transfer was suitable because it would allow Mr H to leave any residual funds to his family on his death. But the priority here was to advise Mr H about what was best for his retirement. And the existing scheme offered death benefits, by way of a spouse's pension that could have been valuable to his family in the event of his death.

While the CETV figure would no doubt have appeared attractive as a potential lump sum, the sum remaining on death following a transfer was always likely to be different. As well as being dependent on investment performance, it would have also been reduced by any income Mr H drew from it in his lifetime. And so it may not have provided the legacy that Mr H might have thought it would.

Further, I'm aware that Mr H had death in service cover from his employer. So that would have paid a lump sum in the event he died while still working for the same employer. But, if he wanted to leave a legacy for his family, which didn't depend on his employment, investment returns or how much of his pension fund remained on his death, then life insurance may have met his needs.

I've noted that Tenet looked into the cost of life insurance. Its suitability report said the premiums for Mr H would be between £41 a month for term assurance and £115 for a standard policy. But Mr H didn't want to pay the premiums. And while this indicates that death benefits were perhaps less important to Mr H than he thought, I don't think Tenet presented this option in a balanced way. Tenet based the quotes on the full transfer value of Mr H's DB scheme after transfer. In other words it essentially assumed he'd require a life policy to pay the same as his CETV (before drawing down any sums from it). But unless he died before he took retirement, that figure wouldn't be realistic.

Ultimately, Mr H wanted to leave whatever remained of his pension to his family, which could be a lot less than his CETV depending on how much he drew from it and how his investments performed. So a fairer manner in which to provide Mr H with realistic life insurance options would have been for Tenet to ask him how much he would ideally like to leave as a legacy, and how much he could afford to contribute. Insurance on this basis was likely to be a lot cheaper to provide and would have enabled him to leave a legacy without risking his retirement income.

Overall, I don't think different death benefits available through a transfer justified the likely decrease of retirement benefits for Mr H. And ultimately Tenet should not have encouraged Mr H to prioritise the potential for alternative death benefits through a personal pension over his security in retirement.

Tenet also said that transferring would allow Mr H to secure the fund and take control of it. I understand Mr H may have legitimately held concerns about how his employer had handled his pension and the prospect of it entering the PPF. But it was Tenet’s role to objectively address those concerns. The "time to choose" exercise was ongoing and the BSPS2 was in the process of being established; so every indication was the BSPS2 would be viable. But even if not, the PPF would still provide Mr H with a guaranteed income, the possibility of early retirement and the option of accessing TFC. Mr H was unlikely to improve on these benefits by transferring. So, entering the PPF was most likely not as troubling as he might have thought, and I don’t think any concerns he held about this meant that transferring was in his best interests.

In summary, I can’t see persuasive reasons why it was clearly in Mr H’s best interests to give up his DB benefits and transfer them to a personal pension. And I haven’t seen anything to persuade me that Mr H would have insisted on transferring, against advice to remain in the DB scheme.

For the above reasons I think Tenet's advice to Mr H to transfer out of the DB scheme and into a personal pension was unsuitable for him as it was not in his best interests. So, I think Tenet should compensate him for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

In order to calculate the redress, I’m directing Tenet to use the FCA’s BSPS-specific redress calculator. I know that Tenet doesn't feel that it’s within my remit to make such a direction, and it says it intends to continue using an independent actuary. But, while it may use an independent actuary, it’s 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 help 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. And overall, I think it would be reasonable for Tenet to use the FCA’s calculator here as its output is easily understood and I think it will provide Mr H with reassurance that any redress owed to him has been calculated fairly.

Our Investigator recommended that Tenet make a payment for the distress caused to Mr H. Tenet provided its advice in 2017. He complained about that advice in 2022, after speaking to his professional representative. I haven’t seen anything that suggests the advice caused him ongoing distress prior to that. Nor can I see he’s been caused any significant inconvenience in that time. Mr H told us that he has a health condition which has been exacerbated by Tenet’s actions. But he's provided no evidence beyond his comments of that. And it’s fairly common knowledge that the condition he’s complained about may be caused or made worse by many factors including, for example, by lifestyle or a predisposition to it. So I don't think it would be fair to instruct Tenet to make a higher payment to Mr H because of his health condition.

Nevertheless, I do accept Mr H may potentially have been worried to find that the advice might not have been suitable for him. I think finding out about this potential issue has likely caused him some concern, which wouldn't have occurred but for the advice that is the subject of this complaint. So, in the circumstances, I think the recommended award of £200 is fair and reasonable.

Putting things right

A fair and reasonable outcome would be for Tenet to put Mr H, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr H would most likely have opted to join the BSPS2 if suitable advice had been given.

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 BSPS-specific redress calculator to calculate the redress. A copy of the BSPS calculator output should be sent to Mr H's representatives and the Financial Ombudsman Service upon completion of the calculation together with supporting evidence of what Tenet based the inputs into the calculator on.

For clarity, Mr H has not yet retired, and he has no plans to do so at present. So, compensation should be based on the scheme's normal retirement age, 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 H 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 H redress as a cash lump sum payment,
- explain to Mr H before starting the redress calculation that:
    - the 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 the redress prudently is to use it to augment his DC pension
- offer to calculate how much of any redress Mr H receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr H accepts Tenet's offer to calculate how much of the redress could be augmented, request the necessary information and not charge Mr H for the calculation, even if he ultimately decides not to have any of the redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr H's end of year tax position.

Redress paid to Mr H as a cash lump sum will be treated as income for tax purposes. 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 H'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.

In addition Tenet should pay Mr H £200 for the distress caused by the disruption to his retirement planning.

My final decision

I uphold this complaint and require TenetConnect Limited to pay Mr H the compensation amount as set out in the steps above

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr H to accept or reject my decision before 31 January 2024.

Joe Scott
Ombudsman