

The complaint

Mr B complains about the advice given by an appointed representative of TenetConnect Limited, trading as Tenet Network Services ('Tenet') 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. Tenet is responsible for answering the complaint, so I'll just refer to it throughout my decision.

What happened

Mr B held benefits in the BSPS. In March 2016, Mr B's employer announced that it would be examining options to restructure its business including decoupling the BSPS (the employers' 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.

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 B'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. Updated transfer valuations were then provided by the BSPS trustees to qualifying members, reflecting the improved funding position – with the cash equivalent transfer value ('CETV') of Mr B's pension being £538,281.45. And 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.

Mr B approached Tenet to discuss his pension. Tenet completed a fact-find to gather information about Mr B's circumstances and objectives. Amongst other things it noted that Mr B was 50, in good health and married to Mrs B who was also 50. They were both employed. And Tenet recorded that their current income was more than sufficient to meet their outgoings.

In addition to the benefits he held in the BSPS Mr B was also a member of his employer's new defined contribution ('DC') pension scheme. He and his employer were making combined contributions equivalent to 12% of his salary and the value was said to be around £16,000. Mrs B also held a DB scheme pension with a normal retirement age of 60. Tenet recorded conflicting information about what income she'd receive from that scheme. The fact-find recorded an expected annual income of £17,916. But the adviser's written notes referred to this as providing an anticipated £9,000. While a later document talked about an income £13,655 per year "in today's terms".

Tenet said Mr and Mrs B were looking to potentially retire between age 55 and 57. It said

they ideally wanted a joint income of £30,000 per year in retirement but needed at least £25,000. It said flexibility and access to income lump sums were important. And it also said Mr B was drawn to alternative death benefits a transfer would offer for Mrs B and his family.

On 27 November 2017, Tenet advised Mr B to transfer his pension benefits into a personal pension with a named provider and invest in a model portfolio that it said matched his attitude to risk. The suitability report said Tenet did not believe that the level of growth required to enable Mr B to obtain benefits at retirement equivalent to those of the scheme pension, known as the critical yield, was achievable so it would not be possible to achieve greater guaranteed pension benefits. But Tenet still recommended a transfer. It said this was because it would give Mr B improved lump sum death benefits and secure the CETV now and give him control over his pension, which he wanted given his lack of trust in his employer. It also would provide him flexibility to achieve his retirement objectives. Tenet also recommended that Mr B opt to take ongoing servicing of his pension, for an additional cost.

Mr B complained in April 2022 to Tenet. He said that he'd received a letter from the regulator, the Financial Conduct Authority ('FCA'), making him aware he may have received unsuitable advice. So, he wanted Tenet to investigate and compensate him if he had been incorrectly advised.

Tenet responded in September 2022. It said, at that stage of its investigation it proposed to make Mr B an offer and calculate if he was due redress under the methodology prescribed by the regulator. It said it would need to instruct a third party to carry out the calculation, which could take some time.

In December 2022, Tenet confirmed to Mr B a loss calculation had been completed, provided a copy and explained this showed that he had not incurred a loss due to the transfer. So, it said no redress payment was due. The loss calculation was based on him retiring at age 55, as Tenet said he'd taken tax-free cash from his pension in 2022.

Mr B asked our service to consider his complaint. He was concerned Tenet's calculations could potentially be incorrect. So, he wanted our service to consider his complaint about the advice he'd received and said he was looking for fair compensation for the unsuitable advice. He clarified that while he had drawn tax-free cash from his pension, he hadn't begun taking a regular income. He added that it wasn't ever his intention to retire at age 55 and he was still working. And he has told us, while he has since taken tax-free cash, this was due to the advice he received from Tenet and it telling him accessing his benefits from age 55 was a viable option. And he says if he hadn't been advised by Tenet to transfer, he wouldn't have accessed his pension until retiring, which would've been at the normal scheme retirement age.

One of our Investigator's considered the complaint. He noted Tenet had said the level of growth required to replicate the benefits being given up was unlikely to be achieved. And the Investigator agreed with this, and that Mr B was likely to receive pension benefits of a lower overall value as a result. The Investigator also said that the evidence suggested the options of moving Mr B's pension to the BPS2 and PPF had likely been portrayed negatively by Tenet, rather than objectively. In addition, given Mr B was still some years from retiring, and his plans could change, the Investigator didn't think there were any reasons that meant transferring at the time was in his best interests. He also considered some of the information that Tenet had used in its models to support a transfer to have been unreliable – in particular in relation to potential remaining liabilities, expenditure and state pension entitlement in the event Mr and Mrs B had retired early.

So, the Investigator recommended that the complaint be upheld. He said Tenet should carry out a further redress calculation – on the basis Mr B would've likely joined the BPS2 and

taken benefits at age 65 – and compensate Mr B for any losses he'd incurred as a result of the unsuitable advice.

Tenet responded and said it largely agreed with the Investigator's findings but did not agree with how the loss calculation should be completed. It said Mr B had taken tax-free cash from his pension at age 55, so it disagreed that any calculation should be on the basis of him not taking the retirement benefits until age 65. It also said it believed the loss calculation it had already carried out, which showed no loss, was done correctly, so Tenet didn't think a further calculation was required. And it said it would like an Ombudsman to review the complaint.

The regulator has since developed a BSPS-specific redress calculator. The calculator was developed for the BSPS consumer redress scheme. But it can still be used to carry out calculations in non-scheme cases, like Mr B's complaint with the Financial Ombudsman Service. We asked Tenet if it would carry out a new calculation, using the FCA BSPS-specific calculator as this is what an Ombudsman was likely to require. But Tenet said its position had not changed and it did not think a new calculation was required.

As agreement could not be reached, the complaint has been passed to me to decide.

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.

When Tenet first responded to Mr B's complaint, it told him it was willing to calculate if he had suffered a loss and potentially offer compensation. While it did note that this was without admission of liability at that stage, it didn't argue that the advice it had given was right for Mr B. And following our Investigator's opinion, which was that the advice wasn't suitable for Mr B or in his best interests, Tenet said it largely agreed with the Investigator's findings and its only dispute was in relation to what the appropriate way to put things right was. So, it seems reasonable to conclude that Tenet accepts that the advice provided to Mr B was unsuitable.

With that in mind, I don't need to address the suitability of Tenet's advice to Mr B in detail. And will largely focus on how matters should be put right. However, for the avoidance of doubt, I agree with the Investigator's view that the advice was unsuitable.

The critical yields appear unlikely to have been achievable, which Tenet acknowledged and agreed with in its recommendation. So, Mr B was unlikely to improve on the guaranteed pension he'd have been entitled to.

While Mr B might've discussed preferring to retire early, he was still several years away from retiring. I think, when asked, most people would say they would like to retire early. But I don't think any thoughts he might've had on this were finalised – and Mr B has confirmed he is still working and doesn't have plans to retire. I also don't think, even if he had intended to retire early that he necessarily needed to transfer for flexibility. Mr B could've taken benefits early under the DB scheme and would've also had access to flexible benefits through his

employer's new DC scheme which he was contributing to. Mrs B was entitled to guaranteed benefits from age 60. And when combined, these could've still allowed them to meet their stated needs in retirement. Although like our Investigator, I'm not sure how accurate the assumptions around their needs were. In any event though, as I don't think Mr B's retirement plans were set in stone, I think it was too soon for an irreversible decision to transfer out of his DB scheme to be considered in his best interests. Particularly when he had the option of joining the BPS2, which would've meant he retained the option to transfer out at a later date if his circumstances required it.

As a pension's primary purpose is to meet the holder's needs in retirement, I don't think transferring for alternative death benefits was in Mr B's interest. The DB scheme would provide a spouse's pension, which was guaranteed and would escalate, that could've been useful to Mrs B if Mr B pre-deceased her. And any legacy left through a pension was unlikely to be the same as the CETV, as it would be reduced by any benefits Mr B drew in his lifetime.

While Mr B was likely to have been, quite understandably, concerned about what had happened with his pension up to that point, I don't think any concerns he held about this meant transferring was in his best interests – as the BPS2 and PPF would've still provided him with guaranteed pension benefits, which he was unlikely to improve upon by transferring.

So overall, I can't see persuasive reasons why it was clearly in Mr B's best interest to give up his DB benefits and transfer them to a personal pension. And I also haven't seen anything to persuade me that Mr B would've insisted on transferring, against advice to remain in the DB scheme.

As I've noted though, Tenet said it largely accepted the Investigator's findings on this. And the dispute now is around how to put things right. So, I'll focus in the rest of this decision on how to do so.

Mr B has said he is seeking fair compensation for the poor advice.

Where we think an error has been made the aim of any recommendation we make is to put the impacted party, as far as possible, in the position they would've been in. Mr B can't re-join the BPS. So, the aim is to put him back, as close as possible, to the financial position he would have been in at retirement had he remained in the DB scheme. The FCA developed and has set out a methodology for calculating redress where unsuitable advice has been given to transfer from a DB scheme (like the BPS). And as I said above the FCA has more recently developed a calculator specifically for situations such as this.

The BPS-specific redress calculator has been developed by actuaries and is programmed by the FCA with benefit structures of the BPS, BPS2 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.

To put it simply, this looks at the expected cost at that time of replacing the benefits the DB scheme would've provided – using assumptions which the FCA sets. It then compares that with the current value of Mr B's pension (including any benefits that have already taken). If the cost of replacing the benefits that were given up is greater, then the redress would be the difference between the two. If the value of Mr B's current pension (and benefits drawn) is more than it would cost to replicate the benefits given up because of the advice, then he would be in a better financial position and no redress would be due.

The calculator was developed by the FCA 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. And the calculator output was intended to be easily understood, to provide reassurance to consumers, like Mr B, that any redress owed to him has been calculated fairly.

I think using the FCA's BPS-specific calculator is now the most appropriate way to calculate the redress here. Tenet says it has already carried out a redress calculation in 2022 under the rules applicable at that time. So, it doesn't think it needs to do this again. And it has also suggested that it doesn't have to use the FCA's BPS specific calculator. But Mr B did not accept its initial calculation and questioned some of the assumptions were correct. As I'll go on to explain, I don't think they all were correct. So, because of this, and because the matter has not been resolved and Mr B requested our service consider his complaint – as he is entitled to do – I do think it is appropriate for an updated redress calculation to be completed. It is for me to determine what redress would be appropriate here and that can include a direction to use the FCA's calculator. And I'm directing Tenet to use the FCA's BPS-specific redress calculator.

Tenet says that because Mr B drew tax-free cash at age 55, the redress calculation should be based on the assumption he'd have taken benefits from the DB scheme at that point (which is what its previous calculation assumed).

The FCA sets out in DISP App 4 some of the assumptions to be used when calculating redress for unsuitable DB transfer advice. This says that a business should presume that a consumer would've drawn benefits at the normal scheme retirement age of the DB scheme. It goes on to explain under which circumstances that presumption could be rebutted. But it says that the withdrawal of tax-free cash is unlikely to be sufficient for this purpose. It also says the presumption is unlikely to be overcome if the consumer's intentions were potentially influenced by the advice. Here Mr B has drawn tax-free cash from his pension. But he hasn't begun taking other benefits and is still working. And he's said retiring early wasn't really his intention, and it was the advice from Tenet that has influenced his actions.

Taking all of this into account, I think it is fair here to presume that but for the advice, Mr B would not have accessed pension benefits from his DB scheme until the normal scheme retirement age of 65. I also think it's fair to assume, with that in mind, that if he'd been advised not to transfer, he would have likely joined the BPS2. By opting into the BPS2, Mr B would've retained the ability to transfer out of the scheme nearer to his retirement age if he needed to. Also, under the BPS2 the spouse'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 (even if one was ultimately taken). The annual indexation of his pension when in payment was also more advantageous under the BPS2. So, the calculation of redress that I'm requiring Tenet to complete, should be on the basis of these assumptions.

Putting things right

A fair and reasonable outcome would be for Tenet to put Mr B, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr B would have most likely remained in the occupational pension scheme and opted to join the BPS2 if suitable advice had been given. And I think he likely wouldn't have accessed pension benefits before the normal scheme retirement age. So, compensation should be based on the scheme's normal retirement age, as per the usual assumptions in the FCA's guidance.

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

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

Redress paid to Mr B 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 B'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

I uphold this complaint and require TenetConnect Limited, trading as Tenet Network Services to carry out the steps outlined in the 'putting things right' section of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 12 January 2024.

Ben Stoker
Ombudsman