

complaint

Mr T complains that TenetConnect Limited failed to give him timely and accurate advice, which led to him incurring a tax charge he would otherwise have been able to avoid.

background

Mr T was a client of TenetConnect. He found that he was under threat of redundancy and made an appointment to see his adviser in early February 2016. And he says that he was advised to commission a thorough review of his finances to ensure he was fully prepared financially ahead of any actions before, during and after his retirement.

Mr T says that, at the meeting, he told his adviser he would be able to negotiate his leaving date. And he says he specifically asked for advice on two issues:

- Whether he should make a one-off pension contribution to his defined contribution scheme through annual bonus waiver in March 2016; and
- Whether he should take advantage of a once-a-year opportunity to reduce his defined benefit pension accrual from July 2017.

Mr T says that, after chasing his adviser for advice on the one-off pension contribution, he was told it was ok to proceed. So he paid around £10,000 to his pension.

TenetConnect's report appears to have been delayed due to the adviser's illness. Mr T says he had to chase the report on a number of occasions. And he says that, because the report was late, he didn't receive advice on whether to reduce his defined benefit pension accrual from July. So he didn't make any change to his pension contributions.

Mr T received a report from the adviser in August 2016. This said that he wouldn't incur any annual allowance charges. And he says that, in reliance on this, he finalised his redundancy date as end February 2017. But he subsequently checked the report more carefully and discovered that the report was incorrect.

Mr T sent some revised figures to TenetConnect. Following discussions, the adviser reissued the report. The adviser's revised report appeared to be based on Mr T's figures.

The revised report said that there may be a small annual allowance charge of around £1,150.

Mr T retired in February 2017. And in March 2017 he contacted his pension scheme to get the actual 2016/17 pension savings figure for his tax return. But he was told that the figure was much larger than he was expecting, due to an additional state pension enhancement applied by the pension scheme. This meant that his payments exceeded the annual allowance by a greater amount than he had expected. And it meant he incurred a larger annual allowance charge of around £14,000.

Mr T complained to Tenet. Tenet agreed that there had been errors in the report, and a delay in producing it. And it offered to waive the fee charged and pay Mr T £250 compensation for the trouble he had experienced. But it didn't agree it should pay the annual allowance charge.

our investigator's view

Our investigator recommended that LEBC should:

- Refund its fee and pay £250 compensation to Mr T as it had offered to do and, in addition;
- Work with Mr T to determine whether his tax liability might still be mitigated, or, if not, to pay the additional tax liability he incurred.

TenetConnect didn't agree with our investigator's conclusions. It said, in summary, that Mr T was not able to and did not intend to delay his retirement. And it said he should have taken steps to mitigate his loss.

Mr T also responded to the investigator's view. He said that, as he has already retired, there was now no possibility of mitigating the tax liability. And he had also provided evidence that he had incurred tax liability of £13,859.10.

my provisional decision

I issued my provisional decision to both parties on 18 June 2018. I said, in summary:

- Mr T had provided detailed calculations to show how he might have been able to mitigate his tax liability if he had received timely and accurate financial advice. He said that, by a combination of not making the salary sacrifice payment, reducing his contributions to his pension scheme and delaying his retirement into the next tax year, he would have been able to reduce the annual allowance charge to zero.
- TenetConnect didn't agree that Mr T could have moved his redundancy in order to mitigate his tax liability. It said that Mr T should have been able to foresee the potential tax charge, a fact which was proven by the fact that Mr T had done the calculations himself. And it said that he should have taken steps to mitigate his losses by taking other advice.
- I'd carefully considered what TenetConnect had to say. But, having done so, my provisional view was that I didn't agree. Mr T had provided evidence from a former colleague who was able to defer his redundancy date by agreement with the employer. Taking account of that evidence and Mr T's explanations I was minded to agree that Mr T could also have organised his redundancy so that he retired in the following tax year.
- I noted that TenetConnect had said that Mr T should have foreseen the tax charge and/or carried out calculations himself before his retirement, as he did after the event. But, although Mr T has some financial expertise he said, and I was minded to accept, that he was not a pensions expert. In my view this was proven by the fact that his initial calculations didn't take account of the state pension enhancement applied by the pension scheme.
- TenetConnect also said that Mr T should have sought advice elsewhere given the delays he encountered. But again, having reviewed the timeline of events, my provisional view was that Mr T wasn't aware that there was a problem until too late. Mr T said, and I was minded to accept, that he didn't finalise his redundancy date until he had received the report in August 2016 which said that he wouldn't incur an annual allowance charge. It was only after doing this that he became aware that there were errors in the report which meant that he would incur a charge. And it was only after he had retired that he became aware that the charge was actually much greater than he had previously believed. By that stage it was too late for him to take alternative advice or take steps to mitigate his loss.
- For the reasons set out above, my provisional view was that TenetConnect made an error, by not correctly calculating the annual allowance charge Mr T was likely to pay, and not advising him to take steps to mitigate that charge.

- Where an error has been made, the approach this service takes is to try to put the consumer back in the position they would have been in had no error been made. In Mr T's case, my provisional view was that, if TenetConnect hadn't made an error, Mr T would have been able to take steps to mitigate the tax charge with the result that no annual allowance charge would have been payable.
- Mr T had provided evidence to show that he has incurred an annual allowance charge of £13859.10. My provisional decision was that TenetConnect should compensate Mr T for this charge.
- Our investigator had suggested that TenetConnect should also refund its fees and pay Mr T £250 compensation. Taking account of all the circumstances of this complaint, I was minded to find that this was fair and reasonable.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Both Mr T and TenetConnect have responded to my view. Mr T agrees with my conclusions. But TenetConnect says that my provisional redress over-compensates Mr T. It says that the fee that Mr T paid for the advice should not be paid back to him, as it would have been incurred if he had received suitable advice.

I've considered what TenetConnect has to say. But, having done so, I don't agree. TenetConnect is correct to say that the normal starting point for this service is to try to put a consumer back into the position they would have been in had no error been made. But, in this case, I've taken account of the fact that TenetConnect made repeated errors. The report was late, which meant that Mr T didn't have the opportunity to change his contributions to his pension scheme. And not only were there errors in the report sent to Mr T in August 2016, but TenetConnect failed to put the position right when Mr T pointed out those errors. Instead, it appears to have simply accepted the figures that Mr T provided.

TenetConnect originally offered to refund its fees to Mr T and pay him £250 compensation in recognition of the poor service he had received. And, in all the circumstances of this case, my view is that it is fair that TenetConnect should honour that offer in addition to compensating him for the annual allowance charge he incurred.

my final decision

My decision is that I uphold this complaint. I order TenetConnect Limited to:

- Pay Mr T £13,859.10 in respect of the annual allowance charge he incurred;
- Refund to him the fees it charged him in respect of this matter; and
- Pay him £250 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 10 August 2018.

Alison Cribbs
ombudsman