

The complaint

Mr E complains about the poor service he received from TenetConnect Limited concerning advice to potentially transfer out of his defined-benefit (DB) pension scheme. Mr E believes he's suffered a financial loss as a result.

Mr E was advised by a financial adviser who was granted temporary permissions by Tenet whilst her firm was going through the Appointed Representative (AR) approval process. Tenet has since ended its direct links with that adviser. But, as she was acting for Tenet at the time Mr E sought advice, it remains responsible for the adviser's actions. So, I've referred to Tenet throughout this decision.

What happened

Mr E was previously a member of a DB pension scheme.

He was first in contact with Tenet around April 2020. He'd apparently already received an indication from a different financial adviser that transferring out of his DB scheme might be a good idea for him.

Having received a signed client agreement and answers to a risk profiler questionnaire from Mr E in May 2020, Tenet wrote to him on 8 June 2020 to let him know about the process it would carry out when assessing his retirement plans.

Also in June 2020 Tenet completed an initial fact find; financial planning questionnaire and risk profile report with Mr E. Although the documents on file aren't complete (as the advice process wasn't ultimately concluded) a number of personal details are recorded. Those include that Mr E was age 61 and was hoping to retire at age 62 (using the tax-free cash lump sum from his DB scheme to fund his retirement), even though his DB scheme retirement age was 67. He owned his own home and had savings and an ISA.

Part of the advice process was for Tenet to ask Mr E's DB pension administrator for a cash equivalent transfer value (CETV). Mr E completed the letter of authority around mid-June 2020 and the request was made to the pension administrator sometime after.

In a letter dated 23 August 2020 the DB scheme administrator said the CETV was £805,348. It said that this value was guaranteed until 23 November 2020. The administrator said that given the size of Mr E's fund, it needed to see evidence that Mr E had taken regulated advice in order for a transfer application to proceed. It suggested that the advice process could typically take about six to eight weeks to complete. And, once all forms had been received and checked – it said it would need a discharge form and receiving scheme form and payment would then usually be made within about ten working days.

During September 2020, Tenet asked Mr E to complete a new client agreement following some changes in the regulator's rules. On 29 September 2020 Tenet confirmed receipt of Mr E's updated client agreement.

Mr E says he was in contact with Tenet during October and November 2020 to chase a progress report.

It seems that during October 2020 Tenet was in the process of removing the adviser who was helping Mr E from its network of ARs. That process was apparently concluded about the time that the CETV was due to expire in November 2020.

In December 2020 the adviser who'd initially been acting for Tenet told Mr E that as the CETV had expired, a new one had been requested. She also gave Mr E the name of a different adviser working for another firm who might be able to help him.

In February 2021 the DB scheme administrator wrote to Mr E in relation to the more recent request for a CETV. It said that members were entitled to one quotation each year and that subsequent requests came at a cost of £432. And, as the previous CETV was only guaranteed until November 2020, Mr E needed to sign new forms if he wanted to go ahead with a new calculation. It sent a similar letter to Mr E in April 2021.

I understand that a new CETV was provided sometime in 2021. By this time the value had reduced to £744,337. Mr E transferred out of his DB scheme later in 2021. But he believes Tenet is responsible for him receiving a reduced CETV and the fact that he had to pay a fee for a revised CETV to be produced.

Mr E complained to Tenet. It partially upheld the complaint on the basis that there were shortcomings in its service. It offered £500 compensation in respect of the impact that had. But, it didn't accept that it caused a financial loss. Amongst its comments it:

- Referred to an extract from the engagement letter to Mr E which explained that the CETV only had a limited window before it expired, following which it would need to be recalculated and may go up or down in value. It said that analysing pension benefits is a lengthy and complex process.
- Explained that should the expiry date for the CETV allow an insufficient amount of time to carry out the research needed, Mr E would be told that the pension trustees may need to carry out another calculation.
- Appeared to accept that after obtaining the transfer value around August 2020, little work was done to complete the advice process. And Mr E then found out that the adviser was no longer able to help. She referred Mr E to another firm, which helped him complete the transfer process by which time the CETV had reduced.
- Explained that at the time Mr E sought advice, the adviser worked for another firm, which was in the process of obtaining FCA permissions to become one of Tenet's ARs. The adviser was given temporary permissions by Tenet whilst that process was underway with the expectation that she'd then give advice under the umbrella of her own firm. But Tenet subsequently decided not to continue with the FCA application or use the adviser. Those events coincided with the time that Mr E was due to receive advice. Tenet accepted however that it should have contacted clients like Mr E to make sure they were offered the option of continuing the advice process.
- Said that despite the shortcomings in its service, the situation as far as the transfer value was concerned wouldn't have been any different even if the transfer process had been completed on time. Largely because the advice process wasn't a formality to allow Mr E to access his pension. It was a process that required advice to be given about whether Mr E should transfer his pension or not – and that advice should typically be to remain in the

scheme, given the FCA's stance that most DB transfers aren't suitable. Tenet felt it was more likely than not that it wouldn't have recommended Mr E transfer out of his DB pension and would have refused to deal with the matter on an 'insistent client' basis. It felt that Mr E would have needed to obtain a new CETV in any case, so it didn't think he'd likely have received the August 2020 transfer value.

- Even if the advice had been to transfer, Tenet didn't think there was a guarantee the process would have concluded within a three-month window because *"your adviser would have been reliant on receiving information from various parties who may have not responded in time"*.

Mr E wasn't happy with Tenet's response, so he complained to our Service. One of our investigators looked into the complaint and said things such as:

- He couldn't conclude that Mr E would have received the higher transfer value had it not been for Tenet's actions.
- DB scheme pensions are valuable due to the guaranteed income that they provide. So, regulated advice must be sought before considering a transfer of a fund valued at more than £30,000. And, the regulator says that the starting point for advisers should be that a transfer won't be suitable.
- Ultimately the adviser providing advice to Mr E didn't obtain the relevant permissions to complete the advice process.
- He'd thought about whether, given the updated agreement signed in late September 2020, Mr E's pension transfer was likely to have gone ahead had the required permissions not been withdrawn. But he wasn't persuaded that there would have been enough time to search the market for appropriate products; make suitable recommendations and speak to Mr E whilst also completing the relevant paperwork.
- But even if all of that could have been completed in time, it was on the assumption that Tenet would have recommended Mr E go ahead with the transfer. The investigator thought it unlikely that Tenet would have made such a recommendation. So, irrespective of the fact that another adviser had recommended a transfer, the investigator thought there would have to be compelling reasons for Tenet to make a similar recommendation. He also didn't think that Tenet would have treated Mr E as an insistent client.
- All of that said, the investigator didn't feel Tenet had handled things particularly well and he concluded that Mr E had been inconvenienced as a result. But, he thought the £500 compensation Tenet offered fairly recognised the impact of that.

Mr E didn't agree with the investigator and made a number of comments in response. Amongst those, he referred to other members of the DB pension who had managed to successfully transfer out of it under the umbrella of Tenet within the three-month window allowed. Our investigator considered Mr E's objections, but they didn't change his opinion overall. As agreement couldn't be reached, the matter was referred to an Ombudsman. It's been passed to me to decide.

My provisional decision

I sent Mr E and Tenet my provisional decision on 22 December 2022. I've included the relevant extracts below:

“There’s a conflict between Tenet and Mr E about the extent of its responsibility when it comes to the financial loss that Mr E says he’s suffered. Mr E clearly believes that Tenet could have given him advice within the three-month window that the first CETV was valid for – even if that advice was to say that Tenet couldn’t support a DB transfer. Although from other comments he’s made and references to other cases that he thinks are similar to his (in which under Tenet’s supervision DB transfers were apparently recommended and facilitated) Mr E thinks Tenet could and should have recommended a DB transfer in his case in the time that was available.

Tenet accepts that its handling of the advice process fell short of the standard Mr E might have expected. But it doesn’t agree that it’s responsible for the financial loss that Mr E says he’s suffered. It’s put forward a number of arguments to support its position.

So, whilst accepting that it didn’t give Mr E the sort of service he could have expected, Tenet appears to be saying that even if things had gone smoothly there’s still a chance that it wouldn’t have concluded the process in time before the deadline for accepting the offered CETV had passed. Especially when, as far as Tenet is concerned, it probably wouldn’t have made a recommendation for Mr E to transfer his DB pension.

Ultimately, the advice process wasn’t concluded by Tenet at the time. So, whilst Tenet now believes it wouldn’t have recommended a transfer even if things had gone smoothly, realistically speaking, I think that’s difficult to say after the event. Likewise, it’s difficult for me to say with any certainty exactly what would have happened had things been handled differently.

In situations like this I have to conclude things on the balance of probabilities. That is what I think is most likely to have happened based on the evidence I’ve seen and the wider surrounding circumstances.

And having considered that evidence, on balance, I’m persuaded that had Tenet handled things as expected, it would have been able to complete the advice process within the time available and give Mr E a personal recommendation – even if that recommendation was not to transfer. Or at the very least, if it didn’t feel able to help Mr E, it could have told him so, which would have enabled him to approach another adviser. Tenet didn’t do any of those things before the deadline to accept the CETV had expired. For the reasons I’ll go on to explain, I think Tenet is responsible for the delays that occurred.

I can see that Mr E first engaged with Tenet around April 2020 and it received his client agreement the following month. By mid-June 2020 it had completed some of its preparatory work including its initial fact find and risk profile report. So, whilst there was still some work to do on receipt of the CETV, including obtaining a transfer value analysis report (TVAS) and compiling a suitability report with its recommendation, it seems likely it could have done the remaining work in good time and well in advance of the CETV expiry date of November 2020.

I say that in particular because the letter from the DB scheme administrator to Mr E states that it typically takes about six to eight weeks for an advice process to be concluded. I’ve taken that to mean that’s how long the process typically takes from start to finish. And I’m aware that CETVs typically come with a three-month window to accept them as, in the majority of cases, that gives advising firms ample time in which to: do the appropriate research; produce the required documents; and make a recommendation. It should also give customers like Mr E enough time to consider their options before making a choice.

But in Mr E’s case, as I’ve said, Tenet was already part way through the advice process by the time that it received the CETV dated 23 August 2020. That being the case, I see no reason why it couldn’t have concluded that process and given Mr E a recommendation in

the three months before the CETV expired. Even if issues had cropped up (there's no suggestion that happened) I can't see any reason why they wouldn't have been resolved in the time that was available. And it's worth repeating here that the very fact CETVs are valid for three months is because that's generally considered to be a reasonable amount of time in which to give advice.

Also, the deadline of November 2020 effectively meant that Tenet had seven months overall from first engaging with Mr E to completing the advice process. That seems a reasonable amount of time to me.

I've taken account of the arguments that Tenet has put forward such as the advice process being lengthy and complex. In general terms, I'd agree with that - especially where information isn't forthcoming or objectives change along the way. But that's not what happened here.

First, from what's been recorded, Mr E's aims seemed to be fairly simple and clear. He wanted to access his tax-free cash to fund his early retirement ahead of his DB scheme's normal retirement age. And Mr E appears to have complied with any information requests in a timely way.

Second, this isn't a situation where Tenet came up against other unexpected obstacles. Rather, by Tenet's own admission, nothing really happened on receipt of the CETV. So, as far as I can tell, the only real obstacle it came up against was whether the application to grant AR permissions to the adviser should proceed. And, whilst no doubt a concern for Tenet, I'm not persuaded that's a situation Mr E should have been caught up in. Having agreed to give Mr E advice, Tenet ought to have known that a CETV is time-sensitive, so as soon as it became aware of issues concerning the adviser (which didn't apparently happen until about October 2020 in any event), it should, in my opinion, have either made other arrangements for completing the advice, or at least let Mr E know there could be a problem. It didn't do those things either and it seems that the next update Mr E received was after the CETV had already expired.

Tenet also said the advice process isn't a formality to transferring a pension. That's a reasonable comment to make given the regulator's starting position (which Tenet has also referred to) that a DB transfer is unlikely to be suitable. However, the fact of the matter is, because Tenet didn't give advice, we can't say one way or the other what its recommendation would have been. But, I have to keep in mind that even if Tenet didn't recommend a transfer, which is entirely possible, had it completed the advice process in a timely and efficient way, Mr E would have had a suitability report confirming that recommendation. That's important because the regulatory requirement is only that a customer like Mr E has received regulated advice. The fact that the advice might be not to transfer would not prevent a DB transfer from going ahead. So, even if Tenet's recommendation was not to transfer, Mr E could have satisfied his pension administrator's requirement of having received regulated advice. I note that Tenet said that if its recommendation was that Mr E should not transfer then it would have refused to transact the business. That might be the case. But, ultimately, Mr E didn't need Tenet to facilitate the transfer for him. Once he'd received its advice, he could even have completed the transfer request himself. So, I think it should have been possible to complete the transfer before the expiry of the first CETV.

For all of the reasons I've outlined, I think it's likely that had Tenet handled things better, Mr E would likely have received a personal recommendation in the time that was available. As that didn't happen as a result of Tenet's shortcomings, it follows that I currently think it's responsible for any losses that Mr E then suffered.

I'm intending to uphold this complaint. When awarding redress, my aim is to try to put Mr E back into the position he would have been in (or as close to that position as possible) had Tenet handled things fairly and reasonably. In this case, I think that means that Mr E would have transferred his original CETV sooner. Meaning that he would have had a higher transfer value, taken the same percentage of tax-free cash, and invested the residual amount in the same way."

Responses to my provisional decision

Mr E responded and indicated he was pleased with my provisional findings. He also made some additional comments, including:

- He hadn't previously been seeking compensation – just the sums that he felt he was entitled to. But given the stress and anxiety he'd suffered, he felt some kind of remuneration was warranted.
- The time it took for him to find out that the adviser was no longer dealing with things was "*incredible*". And it was him who had to keep chasing responses. Mr E feels strongly that if Tenet had been upfront with him about not being able to deal with his case, he wouldn't be in the position he is now.

Tenet didn't agree with the provisional decision and made the following comments:

- After reviewing its file again, it strongly believed it wouldn't have recommended a DB transfer in Mr E's particular circumstances.
- Had a recommendation been given in the timescale set out in my provisional decision, Tenet acknowledged it was possible Mr E could have completed the transfer himself by contacting the DB scheme trustees confirming he'd received advice. However, it also referred to that as "*a little-known fact*" seeing as the FCA website doesn't even refer to it being an option. Instead, the FCA website refers to completing things on an 'insistent client' basis, although Tenet was under no obligation to transact on behalf of Mr E.
- It's reasonable to consider that had Mr E received advice by the start of November 2020 to remain in the DB scheme, he would have accepted that advice. If he'd gone against it, as per the FCA website, he'd have been guided towards an insistent client process. But as that wasn't something that Tenet usually offered, it's unlikely things would have progressed in that way.
- If Mr E still wished to pursue a transfer, he'd have needed to contact another adviser, by which time the CETV from August 2020 would either have expired, or would not have enabled a new adviser to start the process again (using the August 2020 CETV). So, Mr E would have needed to obtain a new CETV at his own expense.
- Tenet remains of the view that it can't be held responsible for the CETV expiring or the fact that Mr E had to pay for another CETV, which ultimately had a lower value.

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 account of Mr E and Tenet's responses. But they haven't caused me to change what I said in my provisional decision. I say that especially as Tenet has made many of the same arguments it made previously and which I'd already taken account of before I reached my provisional decision. So, whilst I don't propose to address each individual point made, I'll address those I believe go to the heart of my decision.

I'm inclined to agree with Mr E's point that had Tenet been upfront with him about not being able to help, he probably wouldn't be in the position that he is now. And I said as much in my provisional decision when commenting that "*Or at the very least, if it didn't feel able to help Mr E, it could have told him so, which would have enabled him to approach another adviser*". The fact that Mr E did later engage another adviser who helped him to secure a transfer tends to suggest that probably would have happened sooner had Tenet better managed his expectations about what it could (or in this case couldn't) do. In relation to Mr E's wider point about compensation, I agree with him. But as I said in my provisional decision, I'm satisfied that the £500 compensation Tenet offered fairly recognises the impact of its service issues. I remain of that opinion.

Tenet continues to argue that it probably wouldn't have recommended a transfer in Mr E's particular case. But as I said in my provisional decision, the fact that it didn't give advice one way or the other means that we can't say what its recommendation would have been.

But, even if I were to accept that Tenet would most likely have advised Mr E not to transfer, that wouldn't change my decision. It's notable Tenet now accepts that if it had made a recommendation (even if that wasn't to transfer) it's possible that Mr E might have been able to complete the process himself by contacting his scheme trustees. Although it's referred to that as a "*little known fact*". Whether it was little-known or not, isn't entirely relevant, as this was an option that was available to Mr E but was one that he lost because Tenet didn't complete its advice process. At the very least, Tenet ought to have known that Mr E could contact his scheme trustees directly, especially as the letter from the scheme administrator didn't say anything about Mr E needing a recommendation to transfer, it simply said Mr E had to provide confirmation that he'd received advice.

Again, whilst noting Tenet's other comments, I remain of the opinion that it had enough time to complete the advice process before the expiry of the CETV. That meant that, even if Tenet wasn't willing to transact for Mr E, he'd still have had enough time to complete the transfer himself if necessary. And that would have avoided the need for Mr E to request another CETV because there would have been enough time for Tenet to do what it needed before the first CETV expired.

Further, I note that Tenet said it wouldn't have dealt with the transfer for Mr E on an 'insistent client' basis. An insistent client is a consumer who wishes to act against a financial adviser's regulated advice. But even if Tenet had given Mr E a recommendation not to transfer, it was still confirmation he'd received advice, so Mr E could have gone ahead with the transfer without Tenet's further involvement. And there wouldn't have been a need for Tenet to treat him as an insistent client.

Given all of the factors I've set out above, it's still my view that Tenet should reimburse Mr E for the costs of having to secure a new CETV whilst taking the other steps I set out in my provisional decision.

Putting things right

So, to put things right now, TenetConnect Limited should do the following:

Step 1 – To compensate Mr E for the reduced residual pension, Tenet should work out the notional value of Mr E's fund if he'd invested the August 2020 CETV sum (less the same percentage of tax-free cash that he took when he eventually transferred his pension) in the same funds_± he invested in after receiving the reduced CETV in 2021.

I can't know exactly when Mr E may have been able to complete the transfer but for Tenet's errors. But I think it would have been before the expiry of the August 2020 CETV. So, I think that Tenet should make this calculation assuming that Mr E had invested the

original residual CETV on 23 November 2020. This means that Tenet should calculate the notional value from 23 November 2020 up until the date of my final decision.

If the notional value is greater than Mr E's residual pension on the date of my decision, then Mr E has suffered a loss. Tenet should allow for the impact of charges and any withdrawals or contributions. It should pay the difference into Mr E's personal pension.

If a payment into the pension isn't possible or has protection or allowance implications, it should instead be paid directly to Mr E as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid - presumed to be 20%.

If Tenet is unable to ascertain the way that Mr E's residual pension was invested, then it should use the benchmark I've set out below, which I consider to be relevant for Mr E's recorded attitude to risk.

Benchmark - for half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds.

Step 2 – To compensate Mr E for the loss in his tax-free lump sum Tenet should pay Mr E the difference between the amount of tax-free cash that Mr E actually received compared to what it would have been had he received the same percentage based on the higher CETV. Tenet should also pay Mr E 8% simple interest from 23 November 2020 up to the date of my final decision, to compensate Mr E for the loss of use of that income payment.

Step 3 - Refund Mr E the fee of £432 that he had to pay for the revised CETV. Tenet should add simple interest to that sum at a rate of 8% a year from the date Mr E paid the fee for the revised CETV to the date of my final decision.

This matter has clearly been a source of worry and concern to Mr E. However, I think the compensation payment of £500 that Tenet has offered fairly recognises the impact of its handling of things. Tenet should pay that amount to Mr E if it hasn't already done so.

Tenet must pay the compensation within 28 days of the date on which we tell it Mr E accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple".

My final decision

I uphold this complaint. TenetConnect Limited should now put things right as I've set out above under the heading of "putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 3 March 2023.

Amanda Scott
Ombudsman