DRN-4153260

The complaint

Mr I complains that he was given unsuitable advice by TenetConnect Limited trading as Tenet Network Services to transfer his personal pension to a Self-Invested Personal Pension ("SIPP"). He says the recommendation didn't reflect his goals, and it wasn't explained to him that the SIPP would be invested through a platform which required him to have an independent financial adviser ("IFA").

Mr I dealt with an appointed representative of Tenet but I'll refer to Tenet throughout, as the representative acted on its behalf.

What happened

Mr I contacted Tenet in July 2021 seeking advice. He said he was concerned about his pension funds being eroded by inflation. He was also concerned about charges.

Mr I had a meeting with Tenet where he discussed what he was looking for. The meeting notes record that if a recommendation was made, this would be for an adviser-led product, with ongoing adviser charges.

There followed various discussions over the following months, including an assessment of Mr I's attitude to risk and his retirement needs. In November 2021 Mr I completed a fact find document, together with Tenet's client agreement, which set out the services and charges to be provided.

Tenet issued a suitability report in January 2022, recommending that Mr I move his pension to a SIPP with a new provider. The report set out the reasons for the advice.

The pension was transferred to the SIPP that month. But Mr I then contacted Tenet saying he was concerned about the economic outlook. There was some discussion about his concerns but Tenet reassured him and said it still thought the recommendation was suitable.

Mr I said he would "draw a line" under his concerns and leave Tenet to manage his funds. However, he contacted Tenet again soon after, requesting a withdrawal of £16,500 to cover his expenses for the year. And he said he was concerned he didn't have funds ringfenced for the following three years' income.

Tenet offered to review his investments and issue a new suitability report with a 'hybrid' solution. But before this was done, Mr I said he was going to move some funds to cash to cover four years' income, and was going to switch his pension to one that was investor-led so he could deal with it himself. Tenet said it would deal with the transfer on an execution

only basis and remove itself as his adviser.

Mr I then complained about the advice Tenet had given, saying the investments were not suitable and he had never been told the SIPP required him to have an IFA. Tenet didn't think it was at fault, and said the advice was suitable for Mr I.

When he then referred his complaint to this service, our investigator didn't think it should be upheld. He said:

- Although Mr I said he made it clear he needed funds for the next four years, that wasn't recorded as the agreed strategy; while the discussions had set out the income he would like, he hadn't specified earmarking funds for four years. What was agreed was that this would be discussed in the next financial year.
- Funds were invested in a growth portfolio where the documents say funds should be seen as longer term and Mr I said that wasn't suitable when he would need income during that period. But the five year timescale is guidance, not a rule. Everything was set out in the documents and he was happy with it.
- Tenet was willing to review the make-up of investments but Mr I went ahead and withdrew funds without waiting.

As no agreement had been reached, the complaint was passed to me to determine. I issued a provisional decision saying I intended to uphold the complaint. I set out my reasons as follows:

Tenet had to consider Mr I's financial circumstances and needs, and recommend something that was suitable for him, taking into account his attitude to risk and capacity for loss.

Tenet set out its recommendations in the suitability report. It had assessed Mr I's attitude to risk and capacity for loss and concluded that his attitude to risk should be assessed as 5 – in other words, balanced. Tenet says the investments were in line with this.

Mr I complained that he wasn't told the SIPP would require him to have an IFA and this isn't what he wanted. But it was noted that he didn't feel comfortable trying to manage investments – he wanted to enjoy retirement without having to worry about the pension and wanted professionals to take care of it. He elected the 'Prime Service' which included an annual review and a professionally managed portfolio with rebalancing, regular updates and access to an adviser as required. The documents clearly said the pension required him to have an IFA. I'm satisfied it was made clear he would be provided with an ongoing service and the SIPP would be dealt with by an IFA on his behalf. So I'm not minded to uphold this aspect of his complaint.

With regard to the advice itself, Tenet recommended the SIPP for a number of reasons, including:

- *it would provide a professionally managed portfolio with better returns and a wider range of investments to choose from;*
- *it would allow full access to pension freedoms and flexibility;*
- *as he wanted them to manage his pension, if he remained with his existing provider it would have to charge him directly whereas with the SIPP the charges could be taken from the funds;*
- *it was likely he would need to withdraw more money in the early years but this would reduce once the state pensions came into payment.*

Mr I had said at the outset that he was concerned about the effect of inflation eroding the value of his funds – indeed, that was the reason why he sought advice. Tenet assessed his attitude to risk and researched various options. I consider there were valid reasons for recommending the SIPP as it would allow him access to a wider range of investments and the flexibility he wanted to be able to be able to drawn down funds when he needed to, to provide an income. The recommendation would meet his wish to outperform inflation and realign with his attitude to risk, with lower costs compared to changing the investments with existing provider. So I think moving to the SIPP was suitable.

But all of the investments were rated at between 4 and 6. While that's in line with Mr I's attitude to risk, Mr I was near to retirement age and needed access to the funds to provide *an income for the following four years.*

The suitability report said Mr I would withdraw a lump sum at the beginning of the tax year to cover a year's expenditure and Tenet would review this at that point and provide a recommendation on how to meet his income requirements. But a key point here is whether it was reasonable to put everything in funds that were aimed at being invested over a number of years. All the investments say they are aimed at growth over a longer period – either three to five years, or five years or more; and that they "may not be appropriate for short-term investment" or for "investors who plan to withdraw their money within 5 years". The risk level is based on the assumption they will be kept for five years and if sold before then, the risk may be different.

In those circumstances it would be reasonable to expect that some of the funds would be invested in lower risk, rather than investments that were intended for the longer term. Mr I needed access to some of the funds within a few months and there was clearly a risk that having to remove funds in such a short timescale might lead to a loss. Even if Mr I agreed to the investments initially, Tenet's role was to consider what was suitable for someone in his circumstances. It wasn't suitable to invest everything in this way.

Mr I says he was forced to sell investments to ensure he had this money in cash to cover four years' worth of drawdown and he suffered a loss of £3,550.24 as a result of having to sell at that point. While it may have been suitable to invest some of the funds in lower-risk, more accessible investments (perhaps fixed rate bonds) rather than cash, I can understand why Mr I was concerned and wanted to ensure he had funds available. It's difficult to say what would have happened if suitable advice had been given. But I can say that by selling the investments at that point Mr I suffered a loss, which he's been able to quantify. In the particular circumstances of this case, I think a fair solution would be to compensate him for that loss.

Mr I has also asked for a return of the set up fees he paid. Even if the choice of investments wasn't suitable, I think the advice to move his pension to a SIPP was appropriate and there would have been fees to pay in any event. So I don't consider it fair for those fees to be refunded.

For these reasons, I was minded to uphold the complaint and direct Tenet to pay compensation of £3,550.24, together with simple interest at 8%.

Replies to the provisional decision

Mr I replied to say the losses from the need to sell down funds to cover his drawdowns was correct at £3,550.24 and he agreed that amount was fair.

He then made some additional comments. I won't set them out in full but they include:

- There was nothing in the documents saying he had to use an IFA for the SIPP. Even though he had indicated he wasn't happy initially making financial decisions, that doesn't mean he wouldn't have considered it in future
- After the initial investment he kept asking the adviser what was going to happen to the four years' worth of drawdown money he needed. The adviser said he didn't know but would think of something at the end of the financial year. When he found the investments were all for longer periods of five years or more he realised he needed to safeguard funds as he would suffer financial hardship otherwise.
- Tenet did offer to review things but said it would need to sell all his investments, which would have caused a large loss. He asked to move the funds to another platform, which was investor-led, as that allowed him to transfer the investments without having to sell them first.

- The losses are in fact higher than £3,550.24. As this has been going on a long time he doesn't wish to delay it further but would like to point out the situation he was left in.
- The fees of £750 should be refunded. He has been told by the original provider there was no charge for transferring to another platform. And bearing in mind how poorly he was advised he feels aggrieved at having to pay the adviser.

Tenet has also replied with a number of comments. The key points include:

- Mr I had been drawing down a lump sum each year to meet his needs. No agreement was made with him about how to meet his income needs for the following tax year – that was outside the scope of this advice and was to be reviewed separately in several months' time, once the need arose.
- A lot of time was spent ensuring the selected funds were all in line with Mr I's attitude to risk. While the provisional decision argues that some funds should have been ringfenced, a key concern for Mr I was the impact of inflation. The investments met his need to outperform inflation.
- Mr I's complaint seems to have been triggered by the markets not performing well in early 2021, which is not something his adviser can be held responsible for.
- Whilst the investments would typically be aimed at growth over a number of years, this didn't prevent Mr I from accessing small amounts of money in the short term.
- Mr I has reported a loss of £3,550.24 but the loss was brought about by his own actions, not the adviser's.

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.

Having considered the further comments carefully, they don't lead me to change my provisional decision.

I'm satisfied the advice to move the pension to the SIPP was suitable and the documents did set out that Mr I would need to use an adviser for the chosen SIPP. Neither party has raised any new evidence to lead me to a different conclusion on these points.

I appreciate Tenet intended to review the investments early in the new tax year. But I don't think that means it could avoid considering where the funds were invested in the meantime. And choosing funds in line with his attitude to risk wasn't the only consideration when considering what was suitable for someone in Mr I's circumstances.

Bearing in mind he would need access to funds within a few months, it wasn't suitable to invest everything in longer-term investments aimed at three to five years. Tenet should have considered leaving some funds more readily available, so that when it came to review Mr I's income needs a few months later there would be funds available for this purpose. Having everything in longer-term investments inevitably led to a risk of there being a loss when some funds needed to be withdrawn so soon. In Mr I's circumstances, that wasn't suitable.

With regard to the fees, my view remains that the advice to move his pension to a SIPP was appropriate and there would have been fees to pay for advice about this in any event. So I don't think those fees should be refunded.

For these reasons and the reasons set out in my provisional decision, I don't think it was suitable to advise Mr I to invest everything in funds intended for longer-term investments. A fair outcome is to compensate him for the loss he suffered at the time.

My final decision

My final decision is that I uphold the complaint and direct TenetConnect Limited trading as Tenet Network Services to pay compensation to Mr I of £3,550.24, together with simple interest on that sum at 8% from the date he sold his investments to the date of settlement.

If TenetConnect Limited trading as Tenet Network Services considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr I how much it's taken off. It should also give Mr I a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 27 June 2023.

Peter Whiteley
Ombudsman