

The complaint

Mr T complains about the advice TenetConnect Limited trading as Tenet Network Services (Tenet) gave him to switch his personal pension to a Self-Invested Personal Pension (SIPP).

What happened

Mr T was advised by a representative of Tenet in 2021 to switch his personal pension to a SIPP. Mr T lived abroad, so the advice took place over video calls.

In late 2021 Mr T's adviser left Tenet. And Tenet provided the details of a new adviser.

In early 2022 the new adviser informed Mr T that Tenet was unable to represent him as he lived abroad.

Mr T complained to Tenet. In response Tenet acknowledged that their adviser shouldn't normally provide advice to non-UK residents. Despite this, they felt the advice was still suitable. Tenet still offered Mr T compensation including the return of their on-going fees, £300 for the trouble and inconvenience they caused and £2,000 towards Mr T receiving new financial advice.

Mr T brought his complaint to our Service. Our investigator upheld his complaint. They asked Tenet to put things right by completing a loss calculation to see if Mr T had suffered a financial loss because of the advice. The investigator concluded it was likely Mr T would have remained with his previous provider – Scottish Widows. So, our investigator asked Tenet to find out the notional value of what the Scottish Widows pension would have been worth had it not transferred. And to compare that with the value of Mr T's current pension.

Our investigator said it would be fair for Tenet's fees and the SIPP provider's fees to be returned to Mr T.

Tenet and Mr T initially accepted our investigators opinion on how to put things right.

Since our investigator upheld the complaint, Tenet have completed a loss calculation. Scottish Widows provided Tenet with a notional value of what Mr T's pension would have been worth on 29 March 2023 had Mr T not transferred it to the SIPP. The notional value Scottish Widows gave was £254,107.83.

Tenet say the actual value of Mr T's SIPP on 29 March 2023 was £280,925.72. So, Tenet say Mr T gained by £26,817.83 from their advice. They offered to pay Mr T £300 for the trouble and inconvenience caused.

Mr T was unhappy with Tenet's offer. He said it was his understanding from our Investigator's opinion of the complaint that Tenet's compensation should be comprised of four elements;

- (1) The loss assessment comparing any difference in the value of his SIPP and the notional value of his Scottish Widows pension had he remained there.
- (2) The return of all fees from his SIPP provider.

(3) The return of the initial and on-going advice fees from Tenet.

(4) £300 for the distress and inconvenience caused.

Mr T says Tenet's offer of compensation ignores points (2) and (3) which he feels should be separately refunded to him.

Tenet disagreed as they said the notional value from Scottish Widows assumes all of the funds remained with them, therefore the initial adviser charge wouldn't have been deducted from the notional value. And the current SIPP value included all charges that had been paid. So, they say Mr T's gain of around £26,000 more than negates the charges and fees incurred.

Our investigator agreed that Tenet's calculation showed that even including the fees Mr T had paid to Tenet and his SIPP provider, he was still better off. So, he didn't think it was fair to separately refund the fees to Mr T.

Mr T disagreed. In summary he said his complaint has always been about the fees he paid Tenet and he didn't think Tenet should be allowed to keep the fees when they shouldn't have given the advice in the first place. Mr T now says he wouldn't have stayed with Scottish Widows and would have found another adviser. And he hasn't had any on-going advice from Tenet over the past two years. So, it isn't a fair comparison to use the notional value of his Scottish Widows fund. He also didn't think it was fair that the loss assessment only provides a snapshot of his potential losses which could change over time.

Mr T's comments didn't change our investigator's opinion and so the complaint has been passed to me to decide how to resolve things.

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.

Neither side seem to dispute that Tenet shouldn't have given the advice that they did. But to be clear I agree with the conclusions reached by the investigator for these reasons:

- Mr T was given advice to switch his pension by an appointed representative of Tenet. Tenet's rules included a restriction that ought to have prevented the appointed representative from advising non-UK residents both initially and on an on-going basis.
- One of Mr T's primary objectives was to have his pensions reviewed and obtain on-going advice on his pension – something which Tenet couldn't provide to Mr T as a non-UK resident. So the advice was unsuitable as it didn't meet Mr T's main objective.
- Tenet ought not to have advised Mr T and explained their reasons for not doing so.
- As Tenet shouldn't have given Mr T the advice that it did, a fair and reasonable outcome would be to put Mr T back into the position he would now have been in had he not received the advice from Tenet.

For these reasons, I uphold the complaint.

I've then considered Mr T's comments about the redress offered by Tenet, which appear to

be the only outstanding issues in the complaint that require a decision from me.

In awarding fair compensation my aim is to put Mr T as closely as possible into the position he would probably now be in if he'd been given suitable advice.

I accept that it's possible Mr T would have instructed a different financial adviser if Tenet told him they were unable to help. And it's likely a different adviser would have provided their own recommendation (at an unknown cost to Mr T).

However, it's impossible to know, without the benefit of hindsight, what another adviser would have recommended. They may have recommended Mr T remain where he was, or move to another provider and investment. And I can't say with any certainty whether that recommendation would have performed better, or worse, than Mr T's current position.

I don't think it would be fair to ask Tenet to compensate Mr T for hypothetical losses had another adviser given a recommendation that differed from Tenet's. I think a fairer comparison is to use the notional value of what Mr T's Scottish Widows pension would have been worth had it not moved. So, I'm satisfied that I can fairly conclude that it's reasonable to base the loss calculation on Mr T having remained with his previous provider.

Tenet have provided compelling evidence that had Mr T remained with his previous provider, his pension would have been notionally worth considerably less than its actual value on the date of their calculation.

The actual value of Mr T's pension fund used in the calculation included the fact that fees for initial and on-going advice, as well as the charges of the SIPP provider have already been deducted from his fund.

So, I think the calculation completed by Tenet already took into account the fees from both the SIPP provider and Tenet that wouldn't have been paid if Mr T had remained with his previous provider. And it demonstrated that even having paid those fees, Mr T is better off now. I don't think it would be fair to additionally then pay the fees back to Mr T which had already been included in the loss calculation.

I can appreciate Mr T's strength of feeling that Tenet shouldn't be able to profit from giving advice that it shouldn't have by retaining the fees they've charged him. But it's our service's role to be an informal dispute resolution service. We don't have a regulatory or disciplinary role in relation to Tenet.

When looking at compensation, we don't fine or punish firms. When there's been an error, we look at the impact of that and decide fair compensation to redress financial loss or trouble and upset.

Based on what I've seen, I don't think that Tenet's errors caused Mr T any loss. So, I won't direct Tenet to pay anything more.

I also appreciate Mr T's concerns that the calculations only show potential losses, or gains, on the specific date of comparison – which could change in the future. However, I've seen no evidence Tenet specifically chose the date of the calculation which was 29 March 2023 and it followed our Service confirming to Tenet that Mr T accepted our investigators view.

It's our Service's role to decide complaints on a fair and reasonable basis using the evidence before us. We can't keep cases open indefinitely just in case there is a loss in the future. And Tenet aren't now responsible for choices Mr T makes with his pension, as they are no longer his advisers. So, I won't hold them responsible for any future losses. I'm therefore

satisfied its appropriate for Tenet to have completed the loss assessment on Mr T's complaint when it did, and I won't ask them to do it again now.

Tenet's actions caused Mr T inconvenience to now try and put things right. But Tenet have offered him £300 for the trouble and inconvenience they caused. And I think that broadly reflects the inconvenience caused. So, Tenet must now pay Mr T £300 if they haven't already done so.

Tenet previously made an offer to pay £2,000 towards a review of Mr T's pension by another adviser. This doesn't form part of my award as I've already described what I think is a fair and reasonable outcome in this complaint. Mr T will need to discuss this offer with Tenet if he now wishes to accept it.

My final decision

My final decision is I uphold this complaint.

TenetConnect Limited trading as Tenet Network Services must pay Mr T £300 for the distress and inconvenience caused if they haven't already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 9 October 2023.

Timothy Wilkes
Ombudsman