

## The complaint

Mr L has complained that TenetConnect Services Limited didn't invest cash held within his self invested personal pension (SIPP), and as a result has lost out on fund growth.

## What happened

Mr L agreed a fully managed advisory service with Copeland Wealth Management (CWM) prior to CWM being appointed representatives of TenetConnect. Further advice regarding his pension portfolio was provided by CWM in 2019 when it was appointed a representative of TenetConnect.

Mr L sought advice on his entire pension portfolio but specifically this complaint is in relation to a SIPP he held with James Hay.

The transaction statements for Mr L's James Hay SIPP show that an amount of £16,120 was placed into the cash account in the SIPP in October 2018. A further tax rebate of £4,030 was applied in December 2018. This amounted to a total of £20,150. The contributions were made to the James Hay SIPP prior to CWM becoming an appointed representative of TenetConnect. The transaction statements also show that ongoing adviser fees to TenetConnect started to be paid from July 2019.

Mr L was provided with a client agreement for his James Hay SIPP in July 2019 from CWM. The suitability report dated 25 November 2019 showed that Mr L was advised to retain his defined benefit pension scheme. The same advice showed that the cash held in the James Hay SIPP would be discussed at a later date. Specifically, it said the following:

*"Whilst your immediate priority remains the [defined benefit scheme] pension, we have agreed to complete a broader pension review (including the investment of cash currently held with James Hay) within the next 6 months."*

The financial planning report showed Mr L's attitude to risk was "7 out of 10", where "1" was the lowest risk and "10" was the highest. Mr L rejected CWM's advice to not transfer the defined benefit pension and requested that this be transferred on an insistent client basis.

Call notes from 28 November 2019 written by CWM following a call with Mr L recorded the following:

*"[Mr L] asked about the way forward and [the CWM adviser] explained that, based upon this conversation, [Mr L] was requesting that we facilitate the transfer on his behalf as an insistent customer. [The CWM adviser] explained what this meant in that, should the transfer proceed on this basis then [Mr L] would be considered to have formally rejected our recommendations and would, therefore, assume all risks associated with the transfer including any future unforeseen or unfavourable outcomes arising from it. [Mr L] confirmed that he would be happy to proceed on that basis and accept all risks regarding the transfer. [Mr L] confirmed that, in this scenario, he would still wish to appoint [the CWM adviser] to provide initial and ongoing advice regarding the investment of funds transferred into the James Hay SIPP."*

On 16 January 2020 CWM advised Mr L that, following further discussions, it wouldn't be able to process his defined benefit transfer on an insistent basis and Mr L decided to use another route to achieve that objective.

Mr L was provided with annual statements for his James Hay SIPP in October 2019, 2020 and 2021, which showed that the pension funds remained in cash.

Mr L complained to TenetConnect, but it rejected Mr L's complaint on the basis that the initial advice regarding the investment of the James Hay SIPP was prior to CWM becoming its appointed representative and that annual statements made it clear that the James Hay SIPP remained in cash.

However, TenetConnect did offer to refund the ongoing adviser charges from February 2020 to August 2021 on the basis that no ongoing advice or reviews were being conducted from February 2020.

The investigator considered the complaint and thought it should be upheld, saying the following in summary:

- For the purposes of this complaint, he was only considering CWM's actions after it had become TenetConnect's appointed representative.
- The financial advice provided to Mr L in November 2019 – after the move to TenetConnect – contained a comment that the cash in the SIPP would be reviewed in the next six months once the defined benefit transfer had been undertaken.
- But the investigator thought that CWM could have advised on how to invest the cash in November 2019, given that the advice was to not transfer out of the defined benefit scheme, and that such transfer processes could in any case be lengthy. Alternatively, this should have been reviewed sooner than six months distant.
- As it had been found in a related case decided by this service that the suitability report could in fact have been produced by 24 August 2019, it was reasonable to conclude that the issue of the cash in the SIPP could also have been addressed at this point – and independently of the defined benefit transfer.
- Mr L was paying for a fully managed service, and although the earliest that the suitability report could have been produced was in August 2019, there were further opportunities in November and December 2019 to address the cash in the SIPP.
- Although TenetConnect had pointed out that Mr L had received statements which showed the amounts in cash, as he was paying for a fully managed service the onus was upon the adviser to assess what needed to be actioned on the portfolio.
- There was clearly a knock-on effect from the delays around the defined benefit transfer, but whilst there may have been an unfortunate breakdown in the client-adviser relationship as a result, CWM still needed to provide the advisory services for which it was being paid, or further inform and agree with Mr L as to the next steps.

- The investigator didn't think that it was likely that Mr L would have opted to leave his SIPP funds in cash, given that the value would be eroded by charges – rather, he thought that, had been given advice to do so, he would have invested the SIPP funds in August 2019.

As such, the investigator recommended that TenetConnect compare the actual value of Mr L's SIPP with its notional value, had it been invested in medium/high risk funds (in accordance with his risk profile recorded in 2019) two days after 24 August 2019. The investigator recommended that TenetConnect use one of our benchmarks – the FTSE UK Private Investors Income Total Return Index – to reflect this level of risk.

If there was a loss, the investigator said that this should in the first place be paid into the SIPP, but if this wasn't possible, it should be paid directly to Mr L with a notional deduction for the (assumed) basic rate he would pay on 75% of the compensation (after tax free cash).

As the proposed benchmark included no deductions for charges, this was essentially "cost free" – and so TenetConnect could offset any refunds (which it had agreed to) provided for advice charges against any loss.

Additionally, the investigator recommended that TenetConnect pay Mr L £300 in respect of the inconvenience he's been caused by the issue being unresolved for several years.

In response, Mr L clarified that the SIPP was closed at the beginning of October 2021, and his new adviser then acted quickly to invest the previously uninvested funds at that point.

TenetConnect disagreed, however, noting that the suitability report from November 2019 said the following:

*"Although this report is solely focused on addressing the merits (or otherwise) for transferring your benefits away from the [name of] Final Salary Pension Scheme, you will see that I have also included a snapshot of your overall pension provision. This report does not make recommendations regarding these arrangements, but I thought you would find this information useful when considering the recommendations outlined below. We have previously discussed these additional policies and identified the need to ensure they remain appropriate for your objectives and risk profile. You do not consider this an immediate priority, though, because you have a good understanding of these schemes and have monitored them regularly. Whilst your immediate priority remains the [name of] pension, we have agreed to complete a broader pension review (**including the investment of cash currently held with James Hay**) within the next 6 months".* (TenetConnect's emphasis)

It also said that page 11 of the suitability report again referred to completing "a full review of the pension arrangements once we have reviewed your [name of] Final Salary Scheme".

It further said that the investigator hadn't mentioned that Mr L wasn't an ordinary retail investor, but had 30 years' experience in financial services as an adviser and then as a primary function of an FSA supervisory role. Mr L had differentiated himself from "Mr Average" and the findings in the separate case decided by this service were that Mr L was a "sophisticated client".

Mr L's stated intention had been to transfer all of his pension funds into the SIPP to maximise the investment potential of his tax free cash, it added. And this service had found no issue with the time it had taken to respond to Mr L's insistent client request and that it was also entitled to make the decision to not do so.

TenetConnect rejected the position that it should have provided advice to invest the cash in the SIPP in August 2019, as it had been agreed that a review of the cash would occur after the defined benefit transfer. It was reasonable to conclude that Mr L, as a sophisticated client, would then review the cash investment position with his adviser after taking his maximum tax free cash.

The ongoing charges should have been “switched off” once the client-adviser relationship had broken down, TenetConnect said, but it had agreed to refund these – as noted and agreed by the investigator.

The transfer completed on 25 May 2020, but it enquired as to the evidence of Mr L informing his adviser that this had happened. This would have been the point to review the cash position within the SIPP, but as the relationship had broken down, this wouldn’t reasonably have been possible.

TenetConnect also queried as to why Mr L and his new adviser had been content to leave the SIPP funds in cash for over two years. In his position, Mr L ought to have been aware that this was the case.

As the fact find had occurred in September 2019, the next annual review would have taken place in September 2020, at which point the cash position in the SIPP could have been addressed. But it was unlikely that Mr L would have accepted a recommendation from its adviser by that point, TenetConnect said.

The investigator wasn’t persuaded to change his view, however, noting in particular that the suitability report had said that, even if TenetConnect couldn’t assist Mr L in the transfer of his defined benefits, it could still assist in the reinvestment of any transferred funds. As such, he considered that it should still have been possible for this to happen.

Moreover, he remained of the view that the cash investment should have effectively been “decoupled” from the transfer process, and so not be dependent upon the latter completing.

But TenetConnect maintained its position that Mr L and the adviser had agreed to defer the investment of the cash in the SIPP until after the defined benefit transfer process had concluded. And this is what would have happened, had the relationship not broken down.

As agreement wasn’t reached on the matter, it was referred to me for review.

Having considered the available evidence, I asked the investigator to enquire further of Mr L as to why he didn’t himself seek to reinvest his pension funds held in cash once he’d engaged a new adviser to process the defined benefit scheme transfer.

In response, Mr L said that, when he was told by TenetConnect that it wouldn’t process the transfer on an insistent customer basis, he sought the services of another adviser to implement the transfer. But that adviser was only engaged to complete the transfer, and not advise on other pension assets held, he said. The adviser did include all of his other holdings in the report, but no advice was sought or provided on them.

Mr L chose to retain his James Hay SIPP with TenetConnect, but had other pension assets elsewhere as well, he added.

Mr L further said that he did transfer the SIPP from TenetConnect later in 2021, but this was after further advice (not from TenetConnect). Mr L confirmed that he had no further contact with TenetConnect after the relationship broke down, other than receiving annual statements.

But Mr L maintained that, as he was paying for a service, his pension funds should have been reinvested sooner, rather than TenetConnect waiting for the transfer to complete.

I issued a provisional decision on the matter on 11 May 2023, in which I set out my reasons for upholding the complaint, but with an amendment to the redress proposed by the investigator. The following is an extract from that decision.

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

*And having done so, whilst I agree with the investigator on some aspects of the case, I think TenetConnect has a point relating to the timescale for the notional reinvestment of the funds held in cash. The suitability report clearly set out the agreed course of action that the cash position would be reviewed once the defined benefit transfer had concluded - and within six months. I think, given Mr L’s experience in financial matters, if he disagreed with this proposal and wished for the cash to be invested sooner, then it might reasonably be expected that he would have raised an objection to this at the time.*

*But as set out by the investigator, my own finding in the related case was that the suitability report could have been issued on 20 August 2019 – and I think it’s reasonable to assume that this would have contained the same information as set out by TenetConnect above. This would have confirmed that the cash position would have been reviewed upon finalisation of the defined benefit transfer - and in any case within six months. And I concluded in the related case that the transfer could have been finalised by 30 December 2019.*

*And although TenetConnect has said that it would have been difficult to advise Mr L due to the breakdown in the relationship, and also that Mr L didn’t inform it when the transfer had completed, it has itself remarked that, had that breakdown not occurred, then the investment of the cash would have been revisited once the transfer had concluded. And I agree - I need to think about what should have happened here. And had things happened as they should, rather than the delays which were unnecessarily incurred, it seems likely that there wouldn’t have been a breakdown in the relationship, and that the adviser would therefore have been aware of the transfer notionally completing on 30 December 2019.*

*And so then, quite reasonably, this would have been the point at which the position with the cash in the SIPP would have been reviewed – as trailed in the suitability report. And allowing for a review meeting, a recommendation, and for the funds to be invested, I think this could feasibly have happened within two weeks of that date – so on 13 January 2020.*

*But I’ve also carefully considered TenetConnect’s point about the cash not being invested, even once Mr L had engaged a new adviser. And so, as set out above, I’ve asked the investigator to enquire further of Mr L as to why this didn’t happen.*

*Mr L has said that, although the new adviser was engaged to focus on the defined benefit scheme transfer, he did include the other pension assets he held in his suitability report, which would have included the funds he held in cash.*

*Mr L has also said that he received annual statements, which would also have set out the cash holding.*

*And so I think Mr L, as an individual with a not insignificant level of financial awareness, would, or reasonably ought to, have appreciated that the cash holding was uninvested and wouldn’t be reacting to financial market movements whilst it remained so.*

*I do accept, to a degree, Mr L’s argument that he was paying for a service from*

TenetConnect which should have included a reassessment of his cash holding. But I do also think that Mr L was in a position to take action in that regard and so mitigate any consequent losses.

I therefore currently think any redress proposal ought to reflect both of these aspects.

#### Putting things right

My current view is that the complaint should be upheld, but with different timings, as set out above, than those recommended by the investigator for the loss calculation – and that it should also reflect my conclusion that Mr L was in a position to mitigate any potential losses.

My overall aim is to put Mr L in the position he would otherwise be, but for the delays incurred in reinvesting his pension funds held in cash.

TenetConnect should therefore compare the actual value of Mr L's SIPP, at the date of its transfer in 2021, to its notional value had it been invested in the FTSE UK Private Investors Income Total Return Index from 13 January 2020 up to that date.

If the notional transferred amount would have been higher, there is a loss. But in line with my findings above, my current view is that, although TenetConnect bears some responsibility for that potential loss, Mr L was also in a position to mitigate his position as he was aware that the funds were held in cash.

And so my view is that TenetConnect should be responsible for 50% of any loss incurred. TenetConnect should therefore apply the same percentage of 50% of any identified loss to the value, as at the date of any final decision along these lines, of Mr L's current SIPP which is represented by that transfer amount.

TenetConnect should in the first instance pay into Mr L's current pension plan to increase its value by the amount of the compensation. The payment should allow for the effect of charges and any available tax relief. It shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.

If TenetConnect is unable to pay the compensation into Mr L's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore, the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr L won't be able to reclaim any of the reduction after compensation is paid.

The notional allowance should be calculated using Mr L's actual or expected marginal rate of tax at his selected retirement age. As set out by the investigator, I think it's reasonable to assume that Mr L is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr L would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

I've then thought carefully about the additional amount of £300 recommended by the investigator in respect of the inconvenience caused to Mr L by the matter having been drawn out over several years. And I think Mr L will have been inconvenienced by the effort he's needed to exert in order to resolve it. Moreover, as set out above, I think TenetConnect bears primary responsibility for the cash not having been invested. But I've also concluded that Mr L ought reasonably to have been in a position to mitigate any potential loss by either reinvesting the cash himself, or seeking advice on this.

*And so, as with any actual financial loss, I think a fair and reasonable outcome here would be to award 50% of that proposed additional amount – so £150.”*

Neither party has submitted further comments in response to that provisional decision.

### **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.

My conclusions remain the same as those set out in the provisional decision, and for the same reasons.

### **Putting things right**

As I said in the provisional decision, my overall aim is to put Mr L in the position he would otherwise be, but for the delays incurred in reinvesting his pension funds held in cash.

TenetConnect Services Limited should therefore compare the actual value of Mr L's SIPP, at the date of its transfer in 2021, to its notional value had it been invested in the FTSE UK Private Investors Income Total Return Index from 13 January 2020 up to that date.

If the notional transferred amount would have been higher, there is a loss. But in line with my findings above, although TenetConnect Services Limited bears some responsibility for that potential loss, Mr L was also in a position to mitigate his position as he was aware that the funds were held in cash.

And so my view is that TenetConnect Services Limited should be responsible for 50% of any loss incurred. TenetConnect Services Limited should therefore apply the same percentage of 50% of any identified loss to the value, as at the date of this final decision, of Mr L's current SIPP which is represented by that transfer amount.

TenetConnect Services Limited should in the first instance pay into Mr L's current pension plan to increase its value by the amount of the compensation. The payment should allow for the effect of charges and any available tax relief. It shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.

If TenetConnect Services Limited is unable to pay the compensation into Mr L's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore, the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr L won't be able to reclaim any of the reduction after compensation is paid.

The notional allowance should be calculated using Mr L's actual or expected marginal rate of tax at his selected retirement age. As set out by the investigator, I think it's reasonable to assume that Mr L is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr L would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

Any compensation should be paid within 28 days of TenetConnect Services Limited being notified of Mr L's acceptance of this decision. If it isn't, simple interest at the rate of 8% pa should be applied to that compensation amount from the date of this decision to the date of

settlement.

And for the reasons set out in the provisional decision, TenetConnect Services Limited should also pay Mr L an additional £150.

**My final decision**

My final decision is that I uphold the complaint and direct TenetConnect Services Limited to undertake the above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 10 July 2023.

Philip Miller  
**Ombudsman**