complaint

Mr V's complaint is about Michael Meese and Associates ("Meese and Associates"), an appointed representative of TenetConnect Limited ("Tenet"). A representative initially made the complaint on Mr V's behalf. The representative said Meese and Associates switched Mr V's personal pension plan to a self-invested personal pension ("SIPP"), so he could make an investment in a commercial development in Spain called Resina Golf. The representative says the transaction was not execution only, as Tenet suggests. It says Mr V was given advice by Meese and Associates. And that the advice was unsuitable.

background

the complaint

Mr V is one of a group of four consumers (who were part of a wider group of investors) who have brought similar complaints to us. In the complaint form submitted to us on behalf of Mr V, his representative says:

- Mr V was introduced to Meese and Associates in order to invest in a golf course in Spain (Resina Golf).
- Mr V was told by Meese and Associates' advisor that he too was investing in the development.
- Mr V was informed by Meese and Associates that he could switch his pension into a SIPP to finance the investment.
- Meese and Associates arranged the switch to a SIPP.
- Mr V has since discovered he owns shares in a company which owns land adjacent to a golf course and has planning permission to develop, but that there is no intention to complete the development.
- Mr V did not understand what "execution only" meant and thought the documents he signed (which confirmed Meese and Associates had acted in an execution only capacity) were part of the switch or transfer process.
- Tenet is not right to say that the transactions were carried out by Meese and Associates on an execution only basis. Mr V was given advice.
- Mr V can't now transfer his pension elsewhere and is trapped in the SIPP, continuing to pay charges.

Resina Golf

The investment Mr V made took the form of shares in an unlisted company called Resina Golf. The business of the company was property development. It intended to purchase land adjacent to a golf course in Spain with a view to acquiring planning permission and then building a number of luxury villas on in it. The life span of the investment was forecast to be five to ten years.

the investment group

Mr V (and the other three consumers who have made similar complaints) was one of a group of nine friends and family who each made a number of property investments. All those in the group were introduced to the property investments by a Mr S. Mr S had previously worked as a regulated advisor but, at the time of the Resina Golf investment, did not work for a regulated business and was not authorised to carry out any regulated activities.

Some of the group (who have not made complaints) have provided witness statements, which Tenet has submitted to us. The statements are broadly similar, and include the following recollections:

- The investors were all introduced to Resina Golf by Mr S.
- Mr S had led them to consider using their "frozen" pensions to invest in Resina Golf.
- A number of the group had visited Spain to view the land Resina Golf intended to develop.
- Mr S acted as middleman between all the investors and Resina Golf.
- All the investors were made aware that Resina Golf was a long term investment and they may not be able to get their money back quickly. They expected to receive a good return in about five years.
- They had each taken the decision to invest in Resina Golf under guidance from Mr S, without receiving any advice from Meese and Associates.
- Mr S had discussed the investment with them, including the potential risks and returns.
- Meese and Associates was approached to execute the switch or transfer of their existing pensions to a SIPP. They were told Meese and Associates was a qualified advisor, required to facilitate the switches or transfers.
- All the group met with Meese and Associates for around two hours to discuss matters.
- At no time before during or after the meeting did any of the group ask Meese and Associates for any advice.
- Meese and Associates' advisor told the members of the group during the meeting that he had not seen any of the documentation regarding Resina Golf.
- Each member of the group had signed a statement confirming Meese and Associates had only provided an execution only service. They (those providing the witness statements) think all the group understood what this meant.

One of the statements says Meese and Associates was approached to facilitate a switch to a specific SIPP operator. The others say only that Meese and Associates was approached to facilitate a switch or transfer, without mentioning a specific SIPP operator. In all cases the statements say they were told Meese and Associates became involved as a regulated advisor was needed to facilitate the switch or transfer.

Meese and Associates and Mr S.

Meese and Associates entered into a Professional Introducer Agreement with Mr S in February 2009. The agreement between Meese and Associates and Mr S said *"the introducer shall not provide any investment advice to the clients."*

the investment process

The following documents formed part of the investment process, in the order listed:

1. **the execution only letter.** Mr V signed a pre-prepared "execution only letter" written to Meese and Associates which said:

EXECUTION ONLY SERVICE

I write to confirm that I have not received any information, advice or recommendation from you or your firm in respect of my decision to transfer my pension to Sippcentre Manchester Limited and invest in Resina Golf Limited utilising my pension fund held with the Sippcentre Manchester Limited.

I understand that this is an illiquid investment and therefore should I decide to disinvest there may be a delay before I am able to do this.

2. **the confirmation letter.** Meese and Associates wrote a letter to Mr V headed *"Execution Only Service"* which said:

Thank you for your letter dated 20th June 2010 confirming that you are aware that this transaction is an execution only transaction and that you have not asked for advice or received any information from me or my firm in respect of this transaction.

It is your decision alone to transfer your Phoenix Life Pension to the Sippcentre and make an investment into Resina Golf Limited. We take no responsibility for either the pension product with the Sippcentre or the investments suitability.

We confirm that all the appropriate paperwork has been passed to the Sippcentre. Our fees as discussed and agreed with you in our meeting on the 14th June 2010 is 3% of the fund value of the pension, and will be deducted from the pension fund once it is received by the Sippcentre.

3. **the explanation letter.** Mr S wrote a letter to Meese and Associates explaining the circumstances of the introduction of Mr V to Meese and Associates. The letter said:

Following your request I am writing to you to confirm the circumstances surrounding the introduction of [Mr V] *to yourself by me.* [Mr V] *is an existing contact of mine and I introduced him to you after he had decided he wanted to transfer his Phoenix Life Pension to the Sippcentre Manchester limited and use his pension fund to buy shares in Resina Golf Limited.*

I can also confirm that I was present in the meeting on the 14th June 2010 which took place between you and [Mr V].

During that meeting you stated clearly to [Mr V] *that you could not provide advice, any information on or confirm the suitability of his decision to transfer his pension to the Sippcentre and invest the money in the pension in Resina Golf Limited shares. You stated that your role was to receive his instructions and to carry these out for which a fee would be charged. He confirmed he was happy to proceed and agreed to confirm in writing to you that he was aware of and understood that the transaction was being carried out on this basis.*

4. **the advisor declarations.** Meese and Associates' advisor signed an *Advisor Declaration* and *Off Panel Illiquid Investment Declaration* which were provided by the SIPP operator. The *Off Panel Illiquid Investment Declaration* said Meese and Associates had:

…made the client aware of the risk factors and terms and conditions for the investment named above, set out in the key features and/or prospectus and other documentation provided, and the issues set out above. The *Off Panel Illiquid Investment Declaration* also confirmed *that the client has been made aware of the above issues and notwithstanding, still wishes to proceed with the investment.*

The "*issues set out above*" the *Off Panel Illiquid Investment Declaration* referred to were:

1. *The risk factors are covered in the key features document and/or the prospectus. You must consider these carefully before deciding either to make this investment.*

2. *There may not be a cooling off, or cancellation, period. Once the application form and monies are submitted encashment of the investment may not be possible, or may be difficult before the end of any specified term.*

3. *If there is no liquid market in the investment, selling/encashing the investment to pay benefits, or for re-investment may be very difficult. This could result in delays or restrictions on the benefits payable,*

4. *Also, if there is no liquid market in the investment, it may be difficult for us to obtain a valuation for accounting purposes. If we are unable to obtain an up to date market value from the manager of the investment, it is our standard policy to value such investments at cost (less any amounts already paid out) for accounting purposes*

5. *If benefits are to commence under your client's pension, or a review of limits under income withdrawal is required, then we are obliged by the Her Majesty's Revenue & Customs (HMRC) to use the market value of assets when calculating the benefits available, if we are unable to obtain an up to dale market value, we may have to value the investment at cost (less any amounts already paid out) or give the investment a nil value (if the investment cannot be realised at that time).*

6. *In the event of death, liquid funds may be required to pay a lump sum and/or pension benefits to the member's dependants. Certain tax benefits are available for the payment of a lump sum benefit, as long as this is paid within 2 years of the date of death of the member. By the SIPP owning assets that are not readily realisable, such tax benefits may be jeopardised and the payment of death benefits may be delayed.*

7. *The charges for this type of investment may be higher than those for other types of investment. You must ensure that you understand the nature and level of the charges payable before committing to make the investment. Additional costs may be incurred by* [the SIPP operator] *in relation to the administration of such investments, which will be payable from the SIPP.*

8. *If the organisation offering the investment or the investment itself are not recognised or authorised by the UK Financial Services Authority, your client will not have the protection of the UK Financial Services Compensation Scheme or be able to complain to the Financial Services Ombudsman. However, the investment may be subject to regulation in another country and you should provide your client with more information as required.*

The *Advisor Declaration* said:

I confirm that any commission due will be disclosed to the client and that I am authorised to give investment instructions on their behalf.

I confirm that where the investor must meet eligibility criteria to make a particular investment (eg where an investor must be a sophisticated or high net worth investor), these criteria have been met.

Meese and Associates has provided a handwritten meeting note dated 14 June 2010. That says:

Client wishes to invest in Resina as other members of his family and friends had already done so using their pension funds.

He had made a £80k investment in land in the Dominican Republic in 2007 without seeking advice.

His friends and family had arranged their SIPPs with [the SIPP operator].

Considers the sale of his business at retirement as the means by which to retire. He considers [his existing] *pension to be a minor part of his pension planning.*

Mr V signed the execution only letter on 20 June 2010. He signed the application form to open the SIPP on 14 June 2010 (in my provisional decision I said this had been signed on 20 June, but I note it was in fact signed on 14 June) . The named advisor on the SIPP application was Meese and Associates. The total value of Mr V's pension at the time of the application was about £12,500.

Meese and Associates sent the confirmation letter to Mr V on 24 June 2010. And on 6 July 2010 the explanation letter was sent from Mr S to Meese and Associates.

After Mr V's money was switched to the new SIPP, an application was made to invest £11,000 in Resina Golf. Meese and Associates advisor signed the *Advisor Declaration* on 13 July 2010, and the *Off Panel Illiquid Investment Declaration* on the 15 July 2010. £11,000 was paid to Resina Golf on 16 July 2010.

On 3 March 2010, the SIPP operator had e-mailed Meese and Associates' advisor, in response to a query from him. The email from the SIPP operator said:

Please find attached a copy of our Off Panel Illiquid Investment Declaration, as discussed in our earlier telephone conversation.

I understand your concerns surrounding the declaration when you have not made the clients aware of the risk factors, terms and conditions of the pension transfers as they have been completed execution only. However we still require the declaration to be completed for the investments to go ahead. If you are satisfied that the clients have received information on the investment and are aware of the risk factors albeit not from you, we can accept the signed declaration on this basis.

Mr V's submissions

After his complaint had been referred to us Mr V sent us a letter dated 2 June 2014, which said:

I would like to explain my side of this situations, I have been put into by [Mr S] *who was supposed to be a bonefied adviser. He was introduced to me by* [another member of the group].

We firstly were put onto off plan apartments in The Dominican Republic to which failed due to very bad advice given by [Mr S] *cost borrowed £ 90,000 on my house which* ***failed.***

As this was continuing we were also dealt into other investments:

Morocco £18,000/- again with NO paperwork given even though asked several times ***failed.***

Geneva again same scenario £ 8,000/- given again NO Paperwork or any plans or of developers who were supposed to build. We were told that this development would be up and running within 12 months ***failed****.*

On these so tightly schedule manoeuvres, I was also asked about how my pension was doing, in conversation so I thought of at the time. Later on I told [Mr S] *that my Phoenix Life Pension had not matured. I was then told by* [Mr S]*, he would be able to help me in doubling even tripling my pension of £ 13,000 on some land he owned in Spain, overlooking a Golf course to which he also said we would build 4-5 villas with a rental income and an income also coming from the golf course. Its only later on that I found out* [Meese and Associates' advisor] *had bought the land off* [Mr S] *and not to worry I would be introduced to* [Meese and Associates' advisor]*. To which I was introduced to on 14th of June 2010.*

They came to my home to advise me about what and how to invest into Resina Golf Limited and how it would again be in my interest to invest because [Meese and Associates' advisor] *had heavily invested as well. Again I was told it would double/triple in a good time for me to retire as Phoenix Life had failed. No time was I neither told anything about a SIPP nor was I told of an execution only transaction*.

Mr V later provided us with the following further information:

- He had not seen the Information Memoradum for Resina Golf – this was never given to him. He received two share certificates. The first had his name spelt incorrectly on it. The second had no signature on it.

- He invested in Punta Perla (the off plan Dominican Republic property he had referred to earlier) in 2007. A £6,000 deposit was paid in February 2007 and £80,000 was paid in July 2007. This was funded by a remortgage for £90,000. Mr S advised him to take the mortgage, and make the investment. Mr S told him that during the third year the property would be built and the value of the property would appreciate. This would make it easy to get a new mortgage in the Dominican Republic to pay off the next instalment and repay the remortgage. Mr S told him there was no risk associated with this investment.

- He invested in a Moroccan property in July 2008. He paid a £15,000 deposit, funded from his savings.

- He invested in a Lake Geneva property in December 2008. He borrowed the money for this investment from his family.

- He also gave £3,000 to Mr S to invest in bank shares, which "never materialised".

- He had been introduced to Mr S in early 2007 by a friend. Mr S was described to him as an overseas investment agent.

- Mr S visited his house several times showing an interest in his investment portfolio. His existing financial adviser had suddenly passed away, and he was looking for another advisor.

- He did not consider himself to be part of a group of investors, and never attended a group meeting where investing in Resina Golf was discussed.

- It was only after a period of time that he began to recognise that the investments he had made on Mr S's advice were not producing returns and were dubious. Mr S's investments were supposed to be long term taking some time to mature and so it took some time before it was apparent that there were problems by which time he had already committed to a number of Mr S's investments.

I'm aware that Punta Perla was run by a business called Ocean View Properties. The money invested was intended to be a deposit on a property, and the remainder of the amount required to build the property was supposed to be funded by a mortgage. However, nothing was ever built. Ocean View Properties went into liquidation in 2009.

Tenet's guidance to its appointed representatives

Tenet's guidance to its appointed representatives, given in June 2009, about execution only transactions says:

"Irrespective of whether an adviser is dealing with a client on an Execution Only basis it is important to remember that they must never arrange a contract if there is reason to believe that the investment is not in the client's best interests. This requirement relates to specific FSA Rules. When faced with this sort of situation the adviser must decline to act for the client."

"There are also certain high-risk products that must not be sold to retail clients without the benefit of financial advice. Among these are Unregulated Collective Investment Schemes including EIS, Occupational Pension Transfers and certain guaranteed products. These are complex investments and ordinarily advisers should not consider arranging sales on an Execution Only Basis."

Tenet's submissions on merits

- Tenet takes responsibility for Meese and Associates' actions, as that business was Tenet's appointed representative.

- Mr V was a knowledgeable and experienced investor, and in particular a knowledgeable and experienced investor in overseas properties.

- All the investors in the group to which Mr V belonged decided to invest in Resina Golf before they were introduced to Meese and Associates.

- The witness statements overwhelmingly support Tenet's position that Mr V has no grounds for complaint against Meese and Associates.

- If any advice was given to Mr V then it must have been given by Mr S. But that is irrelevant to the complaint against Tenet. Mr S did not act on behalf of Meese and Associates or Tenet.

- Meese and Associates did not provide any advice in relation to the transfer of pension funds. Mr V acknowledged that he had not received advice. The letter (which I've called the execution only letter) could not in its view have been clearer.

- Meese and Associates warned Mr V that the Resina Golf investment may be illiquid.

- I need to consider the guidance published on our website about execution only transactions. Following that guidance should lead to the conclusion the transaction here was an execution only one.

- Meese and Associates was under no duty to give advice to Mr V. Suitability considerations only apply where a personal recommendation has been made (COBS 9.1.1R). Here, Meese and Associates made no personal recommendation.

- In some circumstances an appropriateness test applies to execution only business. It does not believe that test applies here.

- Even if such a test did apply, Meese and Associates had sufficient evidence to support a conclusion that an investment in Resina Golf was appropriate for Mr V.

Tenet's submissions on dismissal

- Mr V is making serious allegations against Meese and Associates' advisor.

- There is a conflict in the evidence given by the members of the group. This needs to be explored by cross-examination.

- I should therefore decide that this is one of those cases where the subject matter of the complaint means that it is more suitable for determination by a court or means it should be dismissed without consideration of the merits, for other compelling reasons.

further evidence on the merits of the complaint

We asked Tenet some questions. We asked, in summary:

- How did Meese and Associates' advisor satisfy himself that he was able to sign the SIPP operator's *Off Panel Illiquid Investment Declaration*?

- Did Meese and Associates' advisor have regard to Tenet's guidance on execution only business when deciding to act for Mr V?

- What meetings does Meese and Associates' advisor recall taking place between him and Mr V? What can Meese and Associates' advisor recall being discussed at those meetings?

- Does Meese and Associates' advisor know how Mr V found the SIPP operator?

I've summarised the main points made in response to these questions as follows:

- Each of the group had said they were disappointed with the performance of their pensions, which weren't worth enough to form a realistic part of their retirement planning.

- Each of the group said they had read and understood the information memorandum for Resina Golf, including the numerous risk warnings it contained.

- Each of the group, were experienced investors acting together and it was clear they were willing to commit to long term investments.

- Meese and Associates' advisor reasonably concluded that each of the group, understood the investment and that it was appropriate to proceed in the light of their experience and circumstances.

- Meese and Associates' advisor was concerned about signing the SIPP operator's declaration because he was only acting in an execution only capacity. He discussed this with an advisor colleague (copies of emails have been provided to evidence this discussion).
- Following the discussion with an advisor colleague, Meese and Associates' advisor decided to meet with each of the members of the group individually to check they understood the terms and conditions of the investment, the implications and risks, and still wanted to proceed.

- Meese and Associates' advisor also contacted the investment provider, who confirmed that any investor could withdraw up to the point share certificates were issued. Each of the group were told about this. The certificates were not issued until October 2010, so the group had a considerable amount of time to change their mind, if they wanted to.

- Meese and Associates' advisor can't specifically recall Tenet's guidance, but he would have had regard to any guidance provided to him. In any event, we need to consider Meese and Associates' advisor's legal and regulatory obligations. Meese and Associates' advisor was allowed by the regulator to complete business on an execution only basis, and was authorised by Tenet to do so.

- Meese and Associates' advisor was provided with a copy of the information memorandum for Resina Golf at the meeting with the group. He reviewed it and discussed its contents with the group.

- The group identified the SIPP operator without the assistance of Meese and Associates' advisor. He recalls Mr S telling him that the provider of Resina Golf had mentioned which SIPP operator would accept the investment on an execution only basis.

my provisional decision

I recently issued a provisional decision. A copy of my provisional findings is attached. In short, my provisional decision was that Meese and Associates did not act fairly and reasonably. I said the transaction was an execution only one but, in the circumstances, Meese and Associates should not have facilitated it. It should have either given advice or refused to act. However, I thought the investment would have gone ahead had Meese and Associates done either of these things. So I did not think the complaint should be upheld.

Tenet accepted my decision, and made no further comments.

A solicitor responded on Mr V's behalf. It said, in summary:

- Mr V has not been afforded his rights and protection as a consumer. I have not clearly considered Mr V's circumstances and complaint. Mr V was not part of the large investor meeting regarding the Resina Golf investment and is not of the same financial standing as some of the other investors within the group.

- It is important that I understand fully the context of the meeting that took place at Mr V's home on 14 June 2010. Mr V was visited by Mr S and Meese and Associates' advisor. The meeting lasted between 20 and 30 minutes. At that meeting, Meese and Associates' advisor secured the signature of the transfer of Mr V's pension to the SIPP.

- Mr V is not a knowledgeable investor and he is not a high worth individual. He has made several investments in foreign land based on information from Mr S without proper advice and without seeing plans or paperwork. All of these investments have involved Mr S who at that time, Mr V trusted, all of these investments have failed.

- Mr V was not aware that Mr S was no longer a regulated adviser nor was he fully aware there was an agreement between Mr S and Meese and Associates. The meeting at Mr V's home took place with the two advisers presenting themselves as professional advisers.

- There should have been a fourteen-day cancellation cooling off period for the SIPP. However, Mr V's immediate follow-up concerns were not appropriately responded to. Mr V received what could only be described as a photocopy of a share certificate, there was no appropriate seal and his name was incorrectly spelt. Mr V has consistently bought this matter up and has consistently been ignored and Meese and Associates' advisor batted off his complaints with "don't worry".

- The conduct of the meeting was wholly inappropriate, as Mr V was left with no appropriate copy paperwork or confirmation of the transfer. The follow up letter from Meese and Associates to Mr V dated 24 June 2010 served to indemnify his own position and confirm his fee that would be deducted from Mr V's pension. The letter did not address the concerns that Mr V had raised regarding the poor copy share certificate that they handed him at the meeting.

- It is clear that regardless of whether there was an execution only transaction occurring, Meese and Associates' advisor had a duty of care and a duty to uphold the industry standard of practice. It is not correct to disassociate Mr S with Meese and Associates as there was a professional introducer agreement between them.

- Mr V was not aware that the transfer would go into a SIPP, he was not aware that he was dealing with an unauthorised adviser. He was not aware that he was buying shares in a company that owned land in Spain.

- Contrary to the reports in the response letter from Tenet, Mr V was not part of the two hour meeting to the investor group and never travelled to Spain to view the Resina Golf site or land adjacent.

- It was not made clear or explained about the execution only transaction and Mr V denies signing the confirmation letter dated 20 June 2010.

- Clearly Mr V needed advice on the transfer. However, no action was taken to alert Mr V as to the risks. This is a clear breach of a duty of care regardless of whether the transaction was execution only.

- Many of the responses in the provisional decision refer to the group collectively, not Mr V as an individual. Mr V was not part of the group meeting referred to, and should be considered individually.

- There is an assumption that Mr V has placed reliance on Mr S. Mr V had been misled consistently. He was told that planning permission had already been granted, which was incorrect. The issue for discussion is whether or not Meese and Associates was wrong to transfer the pension into the SIPP for the highly risky illiquid investments in Resina Golf without proper advice from a regulated adviser.

- I highlight the bad advice from Mr S but neglect to acknowledge that Mr S signed up with Meese and Associates for its ability to act as a regulated adviser. Meese and Associates' adviser did not meet his regulatory obligations. He should have considered his concerns fully and took the two options available i.e. declining to act or to give advice. He did neither but continued knowing it was wrong and collected the 3% commission out of Mr V's pension.

- I should not determine what Mr V should or should not have done. I should consider whether Meese and Associates has acted negligently and on the face of it. Meese and Associates' has clearly overlooked its duty of care to the investor as a regulated adviser and should not have continued with the transfer of Mr V's pension.

my findings

I remain satisfied, for the reasons set out in my provisional findings, that this complaint is one I can and should consider and, as neither party has made any comment on my provisional findings on these points, I see no reason to add to those findings. So I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I remain of the view there are three things to think about here:

- Did Meese and Associates act in an execution only capacity (i.e. did it not give advice)? and (if so)
- Was it fair and reasonable, in the circumstances, for Meese and Associates to act in that capacity? and (if it wasn't)
- What impact has this had?

I remain of the view, for the reasons set out in my provisional decision, that it is more likely than not that no advice was given to Mr V by Meese and Associates. I appreciate Mr V says he can't recall signing the execution only letter dated 20 June 2010, and does not recall being told about an execution only transaction. But I think it more likely than not he did sign the 20 June 2010 letter, and was told he had not been given advice by Meese and Associates. The signature on the 20 June 2010 letter looks the same as the signature on the other documentation that Mr V signed. There was also a letter sent to Mr V confirming he'd not been given advice and I've seen no evidence to show Mr V disputed this at the time. And I note that when Mr V initially complained to us his representative said he did sign the letter, but did not understand what it meant. So, whilst Mr V may not have understood the term "execution only" or remember that being discussed specifically, I think he was told he was not being given advice by Meese and Associates – I think he saw and signed the letter.

Although I note the SIPP application form was completed on 14 June 2010, the day of the meeting between Mr V, Mr S, and Meese and Associates' advisor, I do not think this was the first time the prospect of investing in Resina Golf and using his pension to fund such an investment had been discussed with Mr V. I note Mr V said to us:

.. I was also asked [by Mr S] *about how my pension was doing, in conversation so I thought of at the time. Later on I told* [Mr S] *that my Phoenix Life Pension had not matured. I was then told by* [Mr S]*, he would be able to help me in doubling even tripling my pension of £ 13,000 on some land he owned in Spain, overlooking a Golf course to which he also said we would build 4-5 villas with a rental income and an income also coming from the golf course.*

So I think Mr S had advised Mr V to invest in Resina Golf and use his pension to fund the investment before the 14 June 2010 meeting. I think that meeting took place so Mr V could be introduced to Meese and Associates' advisor, so the switch to the SIPP could be facilitated.

In these circumstances, I am not persuaded Mr V understood Meese and Associates had been engaged to provide advice. I think Meese and Associates only got involved because the SIPP operator required a regulated advisor to introduce the SIPP application to it, and that Mr V was acting on advice from Mr S.

I also remain of the view that it was not fair and reasonable, in the circumstances, for Meese and Associates to act in this capacity, for the reasons set out in my provisional decision. I agree with Mr V's solicitor – Mr V had the benefit of regulatory protection, which put some obligations on Meese and Associates. And I don't think those obligations were met here. Meese and Associates should have recognised a clear risk of consumer detriment and either given Mr V advice, or declined to act.

Mr V's solicitor has suggested that I need only decide whether Meese and Associates acted negligently. But I am required to decide what is fair and reasonable in the circumstances. And I am satisfied that to do that here I must not only consider what Meese and Associates should have done, but also what impact those actions would likely have had. So that brings me back to what in my view is the key question – had Meese and Associates given advice, or refused to act, what would have happened? In other words, what is the impact of Meese and Associates failure to give advice, or to refuse to act?

I should stress that I have considered Mr V's individual circumstances. The wider background included in the background section above is relevant as it illustrates the wider context of the relationship between Mr V and Mr S and how it had developed/evolved. But I accept that Mr V's individual circumstances are key.

I remain of the view that the available evidence shows Mr V was heavily reliant on Mr S and that there was therefore likely a significant degree of insistence on proceeding on Mr V's part, after he'd accepted Mr S's advice to invest in Resina Golf and use his pension to fund the investment.

I accept Mr V is not a sophisticated investor or high net worth. But I think at the time the Resina Golf investment was put to him he did understand that these type of investments can go wrong, and must have been aware of problems with some of the previous investments he had made. As I set out in the background above, and in my provisional findings, Mr V had remortgaged his home to make a significant investment in an overseas property, and that investment had run into problems by the time Resina Golf was being discussed with Mr V. So it seems Mr V was prepared to consider Resina Golf despite another overseas property based investment he had made on the advice of Mr S having encountered problems.

I think the comments from Mr V's solicitor in the reply to my provisional decision also support my provisional finding about the likely degree of Mr V's insistence on making the Resina Golf investment.

The solicitor mentioned Mr V had made several investments in foreign land based on information from Mr S without seeing plans or paperwork. So it seems his degree of trust in Mr S was such that he was prepared to give him large amounts of money without seeing any paperwork. The solicitor mentions Mr V's trust in Mr S at the time.

The solicitor also says Mr V was not aware that the transfer would go into a SIPP, he was not aware that he was dealing with an unauthorised adviser, and he was not aware that he was buying shares in a company that owned land in Spain. I'm not persuaded by this. Mr V signed several documents relating to the transfer or switch to the SIPP and correspondence was sent directly to him by his existing pension and the SIPP operator. Mr V has also previously told us Mr S said at the time that he "*would be able to help me in doubling even tripling my pension of £ 13,000 on some land he owned in Spain"*, suggesting he knew he was investing in land in Spain. And the fact he had concerns about the share certificate suggests he knew he was buying shares. Nonetheless, the suggestion seems to be that Mr V would do whatever Mr S asked – including signing papers without any understanding of what they were for and making investments without any understanding of what they were.

All in all, for the reasons given here and in my provisional decision, I remain satisfied that if Meese and Associates had given advice or refused to act, that would not likely have changed the course of things. Mr V would still have moved his pension, and invested in Resina Golf.

The solicitor has made some other new points. It has mentioned problems with the share certificate, a cooling off period, and a lack of paperwork.

The share certificate was issued after Mr V had made his investment in Resina Golf. So I don't think any problems with this impacts what I have set out above. That's an issue that came to light after the investment had proceeded. In terms of paperwork, the available evidence shows that Mr V was sent documentation by both his existing pension provider and the SIPP operator. The latter provided Mr V with a 30 day cooling off period. So I can't see that any paperwork was withheld from Mr V which might have changed the course of things. Or that he wasn't given a right to cancel (which, in any event, was something the SIPP operator was obliged to provide, not Meese and Associates).

Overall, my decision remains as set out in my provisional findings, for the reasons given here and in my provisional findings. To be clear, those provisional findings form part of this final decision.

my final decision

For the reasons given, I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 25 October 2019.

John Pattinson
ombudsman

my provisional findings

As Tenet says Mr V's complaint should be dismissed I have first considered all the available evidence, to decide whether this complaint is one I should look at.

The relevant rules here are the following sections of DISP 3.3.4 Grounds for Dismissal:

The Ombudsman may dismiss a complaint referred to the Financial Ombudsman Service before 9 July 2015 without considering its merits if the Ombudsman considers that:

(10) it would be more suitable for the subject matter of the complaint to be dealt with by a court, arbitration or another complaints scheme; or

(17) there are other compelling reasons why it is inappropriate for the complaint to be dealt with under the Financial Ombudsman Service.

I acknowledge there are some conflicts in the recollections of some of the parties who have provided evidence. But I am satisfied that I can fairly decide this complaint, notwithstanding any conflicts between the recollections of some of the parties involved. I am of the view the complaint is one on which I am able to make a decision on what is fair and reasonable in the circumstances. I'm satisfied that decision can be made by reference to the available evidence and relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the time.

I am therefore satisfied that this complaint is not one where the subject matter makes it more suitable to be dealt with by the courts. Or that I should dismiss it for other compelling reasons.

For completeness, I should also mention that I do not think an oral hearing is necessary in this case. Another ombudsman has already dealt with Tenet's request for an oral hearing. The ombudsman declined that request. When doing so, he pointed out that we do not have the power to test evidence by cross-examination. So a request to conduct a hearing on this basis was misplaced. That remains the case.

The ombudsman also pointed out that, unlike a court, we have the power to make our own investigation. Here I think a thorough investigation has taken place. And both Tenet and Mr V have had ample opportunities to make submissions.

As mentioned above, I am also satisfied this is a complaint I can fairly determine on the basis of the evidence available. So, like the other ombudsman, I do not think a hearing is necessary here.

As I am satisfied this complaint is one I can and should consider I have considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. When doing so, I have again taken into account relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the time.

There are up to three things to think about here:

- Did Meese and Associates act in an execution only capacity? and (if it did)
- Was it fair and reasonable, in the circumstances, for Meese and Associates to act in that capacity? and (if it wasn't)
- What impact has this had?

I think, on balance, the transaction was likely an execution only one. I say this because:

- Mr V had decided to make the investment in Resina Golf and switch his existing pension to the SIPP to fund it, before being introduced to Meese and Associates.

- It is also clear that Mr S gave advice to Mr V about the Resina Golf investment, and recommended he use pension money to fund the investment, and that such advice was given before Mr V was introduced to Meese and Associates.

- A number of members of the investment group have provided witness statements in which they stated that Meese and Associates' advisor did not give any advice on Resina Golf or the switch (or transfer) to a SIPP.

- The execution only letter, which Mr V signed, was written in clear terms, which would have been easily understood even by an inexperienced investor. The letter said "*I write to confirm I have not received any information, advice or recommendation from you or your firm in respect of my decision to transfer my pension….and invest in Resina Golf."*

- Meese and Associates' advisor also wrote to Mr V after the application for the SIPP had been made and said "..y*ou are aware that this transaction is an execution only transaction and that you have not asked for advice or received any information or advice from me or my firm in respect of this transaction. It is your decision alone to transfer your* [pension] *to* [the SIPP operator] *and make an investment into Resina Golf."* This letter, again, was written in clear terms, which would have been easily understood even by an inexperienced investor.

- I've not seen any evidence that Mr V expressed any concern about accepting these statements, or queried them. So I think it's fair to say, at the time, Mr V accepted this as a fair reflection of the role Meese and Associates had taken.

- The SIPP operator says it has no record of any contact with Meese and Associates before it received applications from members of the investment group. It has also told us it wasn't asked if it would accept Resina Golf before the initial applications were made for SIPPs by some of the group of investors (Mr V's application arrived later). When the SIPP operator was asked if it would accept Resina Golf, it explained it needed an "off panel" investment instruction and for the advisor declarations to be signed. It appears that prompted the query from Meese and Associates to which the SIPP operator replied by email (quoted in the background section above) on 3 March 2010. That query suggests Meese and Associates' advisor had no knowledge of the SIPP operator's processes or requirements until he was told about them by the SIPP operator.

- In response to our request for more information, Meese and Associates' advisor said his recollection is that it was Mr V (along with the rest of the group) who selected the SIPP operator. He has also said he recalls that Mr S mentioned that the provider of the Resina Golf investment knew the SIPP operator would accept the investment on an execution only basis. I think this recollection is plausible.

- So I think it likely Mr S found out which SIPP operator would accept the investment, and told Mr V and/or Meese and Associates' advisor this, rather than Meese and Associates recommending the SIPP. If Meese and Associates had given advice on which SIPP would be suitable, I'd expect it to have taken steps to ascertain whether the SIPP would accept the Resina Golf investment, and on what basis it would be accepted. Particularly as another SIPP operator had previously declined to accept the investment on an execution only basis. In the event, it seems these steps were taken by Mr S.

So I need to consider whether Meese and Associates' advisor, acting fairly and reasonably, should have acted in this capacity. I do not think it should. I say this because:

- Meese and Associates' advisor says he would have had regard to guidance provided to him by Tenet. That guidance said he should never arrange a contract if there is reason to believe that the investment is not in the client's best interests. It also said that certain high-risk products (which I think would include things like the shares in Resina Golf) must not be sold without the benefit of financial advice. So he should have been aware that this was a contract which Tenet said should never be arranged on an execution only basis.

- Meese and Associates' advisor likely knew Mr S, an unregulated individual, had given advice to Mr V. That was contrary to the agreement between Meese and Associates and Mr S.

- Meese and Associates' advisor knew that the declarations he signed for the SIPP operator were necessary to allow the investment to go ahead. And he ought to have known the purpose of those declarations was consumer protection. The operator of the SIPP wanted Meese and Associates' advisor to declare that he had made sure Mr V knew what he was getting into.

- The only acknowledgement of understanding of risk Mr V was asked to give by Meese and Associates' advisor was in the execution only letter, where Mr V declared "*I understand that this is an illiquid investment and therefore should I decide to disinvest there may be a delay before I am able to do this*". This falls a long way short of providing a full and balanced explanation of the risks. Meese and Associates' advisor could therefore take little comfort from it. And there is insufficient evidence to show that Meese and Associates' advisor could have otherwise been assured that he should sign the advisor declarations.

I therefore need to consider what impact this has had. Would things have turned out differently, if Meese and Associates had not acted as it did? I do not think they would. I think Mr V would have gone ahead and made the investment even if Meese and Associates' advisor had not acted as he did.

I think, by the time the Resina Golf investment was proposed to Mr V it more likely than not he was aware the investment he had made in 2007 had failed, or had at least encountered significant problems. The completion date had passed, and Ocean View had gone into liquidation. Mr V says it had been his understanding this investment carried no risk. I think he would have known by the time the Resina Golf investment was proposed that wasn't the case.

Mr V had also already made a succession of investments on the advice on Mr S. By this time, Mr V likely knew that some of those also weren't working out as they had been described to him.

This suggests two things. Firstly, that Mr V did have some awareness of the risks associated with investments of this type – he knew they could go wrong. Secondly, that he attached a lot of weight to advice given to him by Mr S, which was being followed by the remainder of the investment group. He was willing to accept Mr S's advice on a number of occasions before making the Resina Golf investment. And he was willing to consider making the Resina Golf investment despite the likely knowledge of other investments recommended by Mr S not having turned out as they had initially been described to him.

Even if Mr V did not think there was a problem with the 2007 investment by the time the Resina Golf investment was proposed to him by Mr S (and I think this is unlikely), this could only be as a result of reassurances given by Mr S. So this again suggests that Mr V attached a lot of weight to what Mr S said. If he was prepared to accept the investment would be ok even through the completion date had long since passed with nothing being built and the business offering the investment had gone into liquidation this again shows a strong will to follow a course of action recommended to him by Mr S.

Either way, I think the evidence shows there was likely to be a degree of insistence on making this investment on Mr V's part. I also think it is clear from his submissions to us that Mr V viewed Mr S, not Meese and Associates, as his advisor. So I think at the time of the Resina Golf investment Mr V likely had a lot of trust in Mr S.

Finally, I think it is plausible that Mr V did not view his pension as forming a significant part of his retirement planning. A sum of around £12,500 is not of course insignificant in itself. But it is not a sum that is likely to make a significant impact on retirement plans – it would only provide a small amount of income. So its possible that Mr V would have taken the view that it was worth taking a high level of risk on making an investment such as Resina Golf, if he thought there was a good prospect of receiving a high return. And, from what Mr V has told us about what Mr S said to him about the investment, it seems Mr V did think there was a good prospect of a high return.

I think there were two alternatives open to Meese and Associates' advisor, had he not acted as he did. One was to refuse to act at all. The other was to give Mr V advice. And, in the light of what I say above, I do not think that either of those alternatives would have achieved a different result. I think, in either event, Mr V would still have gone ahead, transferred and switched his pensions, and made the investment in Resina Golf.

Had Meese and Associates' advisor given advice, acting fairly and reasonably, and mindful of his regulatory obligations, I think that advice should have included clear warnings about the full extent of the risk Mr V would be taking, and clear advice to *not* to switch away from his existing pension. It was clearly unsuitable for Mr V to put all of his, albeit modest, pension into the unlisted shares of one company. And, if giving advice, Meese and Associates should have explained why the switch to the SIPP and associated investment were unsuitable. But I think, in such circumstances, Mr V would still have followed the advice of Mr S, and gone ahead and made the investment regardless.

Risk warnings would have been unlikely to deter Mr V as he'd clearly already formed the view this was a good opportunity, based on what he'd been told by Mr S and, most likely, other members of the group. It also seems likely Mr V had already experienced the downsides of such investments – so he was prepared to make a similar investment on the advice of Mr S despite the likely failure of a previous investment. And I think it unlikely Mr V would have attached more weight to advice from Meese and Associates' advisor than he would to what he was being told by Mr S, in these circumstances.

Having made Mr V aware of all the risks, it would have been fair and reasonable for Meese and Associates' advisor to sign the advisor declarations. So I think the transfer, switch and investment would have gone ahead, had advice been given by Meese and Associates.

Had Meese and Associates' advisor refused to act at all I think it unlikely that would have deterred Mr V, in the circumstances. I think his insistence on making the investment would have been sufficient for him – or, more likely Mr S and/or other members of the group – to have explored alternatives. Other members of the group who had attempted to invest earlier than Mr V had already been turned away by one SIPP operator. But they had sought out another SIPP operator, rather than giving up. So I think a refusal by Meese and Associates' advisor to act would have led Mr V, or Mr S and/or other members of the group, to find another advisor who would have given advice (in which case such advice would likely have been as I have set out above, and achieved the same outcome). Or to find a SIPP operator which did not require a regulated advisor to be involved (I think this would have been possible at the time). So I am satisfied an alternate route to making the switch, and investment, would have been found.

Overall, this means that although I empathise with the position Mr V finds himself in, and do feel that it would have been fair and reasonable for Meese and Associates not to have acted as it did, I do not think it would be fair and reasonable to uphold the complaint. I am not persuaded that Meese and Associates could have done anything to change the course of events. I think it more likely than not that Mr V would have invested in Resina Golf, no matter what Meese and Associates did, and would therefore have suffered his loss regardless. So my provisional decision is that this complaint should not be upheld.