

## **The complaint**

Mrs O's complaint is that an appointed representative of TenetConnect Limited ('TenetConnect'), failed to take the increased value of her occupational defined benefit ('DB') pension into account for the purposes of assessing her available Annual Allowance ('AA') and Lifetime Allowance ('LTA'). She says this caused her a financial loss in the form of AA and LTA charges and penalties, as well as costs for additional legal, financial and accountancy advice and services.

Mrs O is represented in this complaint by a solicitor, but for ease I'll refer only to Mrs O.

For clarity, this decision relates solely to Mrs O's complaint. Mrs O's husband Mr H has raised a similar complaint that is being addressed separately by our Service. But since Mrs O and Mr H were jointly advised by TenetConnect, this decision will sometimes need to make reference to Mr H.

## **What happened**

Mrs O and her husband Mr H each had an occupational DB pension and a self-invested personal pension ('SIPP'), amongst other assets. TenetConnect began providing Mrs O and Mr H with financial advice in 2012.

The evidence provided is that TenetConnect jointly advised Mrs O and Mr H in June 2012, February 2013, February 2014, February 2015, September 2016, and November 2017. TenetConnect also had other contact with them, generally to gather information before giving advice or to follow up after giving advice.

TenetConnect was removed as the recorded adviser on Mrs O and Mr H's SIPPs in around May 2018.

On 26 July 2021, Mrs O and Mr H complained to TenetConnect. They said that the advice it had given them between 2012 to 2015, to make large contributions into their SIPPs so as to benefit from the unused AA, was unsuitable. Because that advice had failed to take into account the increased value of their occupational DB pensions for the purposes of assessing the available AA. And this unsuitable advice had caused them losses estimated to total about £470,000, in relation to AA, LTA, and additional professional costs they'd incurred.

TenetConnect issued its final response to Mr H's complaint on 29 September 2021. We don't appear to have been provided with a copy of its final response to Mrs O's complaint, but I think it's reasonable to assume the points made would have been broadly similar. Which in summary, was that the complaint had been brought too late under the relevant time limit rules because Mr H had known, or ought to have known, all the relevant facts for more than three years. But that it wasn't a complaint that should be upheld in any case. Because Mr H hadn't told the TenetConnect adviser about his DB pension, and there was nothing in the information Mr H provided to the adviser that ought to have led the adviser to believe that Mr H had undisclosed pension assets or that he would be a member of an occupational DB scheme. So TenetConnect wasn't responsible for the losses Mr H thought he'd suffered, and Mr H hadn't detailed or evidenced his financial loss in any case.

Unsatisfied, Mrs O referred her complaint to the Financial Ombudsman Service on 13 March 2022. She said TenetConnect's adviser provided advice from 2012 to 2017. And she'd told the TenetConnect adviser about her DB pension from the start, as evidenced by:

- The meeting notes written by the adviser on 25 January 2013 which said, "*what new pension is [Mrs O] funding via the London Hospital? See carry forward calculations...*"
- Her self-assessment tax returns would have recorded her contributions to her DB pension, and the adviser would have been required to consider these tax returns to complete the carry forward calculations.
- Mr H had emailed details of his and Mrs O's DB pensions to the adviser on 26 March 2013, which the adviser replied to acknowledge.
- In August 2013, as part of its compliance commitments, TenetConnect itself reviewed its file and contacted Mrs O's adviser with its findings. These said "*Advice Unclear – Potentially Unsuitable*" and highlighted, amongst other concerns, that "*There is no record on file of any employer scheme that the client may be entitled to join, whether he is making any contributions anywhere and what his contribution limits are - please can you clarify*".
- In relation to this, TenetConnect's email dated 28 February 2014 concluded with, "*I do concede that there are shortfalls in some of the recording of these facts on the file. This is something we have improved and continue to improve across the [appointed representative] as part of response [sic] to [the internal review]*".

So Mrs O says she'd told TenetConnect about her occupational DB pension in 2012 and 2013 and her related employment continued. So TenetConnect should reasonably have assumed she still held a DB pension, and it was reasonable for her to assume that TenetConnect had taken this into account when advising her. And any competent and reasonable adviser would have seen her occupation and asked if she had a DB pension and what contributions she was making to it. But the adviser ignored Mrs O's DB pension and there was no discussion about AA or LTA. Mrs O and Mr H are laypersons in financial matters, and they followed TenetConnect's advice to maximise contributions to their SIPP's. This advice resulted in them overfunding their AA and LTA. Mrs O and Mr H only became aware TenetConnect's advice was unsuitable and would cause them losses (AA and LTA charges and penalties, as well as costs for additional legal, financial and accountancy advice and services) when they were told this by their new financial adviser in August 2020, so they'd complained within the relevant time limits.

One of our Investigators considered Mrs O's complaint and had further communication with both parties. Ultimately, the Investigator thought Mrs O's complaint had been brought in time because AA and LTA are complex areas of advice and, as a layperson, Mrs O wouldn't have been able to see there was a problem with the advice until she was told this by a new financial adviser in 2020. The Investigator also thought Mrs O's complaint should be upheld. Because the evidence showed that in 2013, details of Mrs O's DB pension were provided to the adviser. And the 2013 internal review ought to have prompted the adviser to review his fact finding and update the advice. The Investigator set out how he thought TenetConnect ought to compensate Mrs O in relation to her AA and LTA, and said TenetConnect should also pay Mrs O £200 for the disruption the unsuitable advice caused her.

TenetConnect still thought Mrs O's complaint had been brought too late, and it wanted Mrs O to provide further information, such as copies of her tax returns in order to clarify the position on a yearly basis between 2012 and 2017, and copies of her accountant's contract/retainer in order to establish exactly what services they provided to Mrs O.

There was further communication between both parties and our Service, and further comments and evidence were shared. Amongst other comments, Mrs O said her accountant never discussed AA and knew that she was taking specific and separate advice about that from TenetConnect, and the accountant wouldn't have had all the relevant information about her pensions in any case. So she was entirely reliant on TenetConnect's specialist pension advice. She did not understand pensions, their workings or implications, and AA and LTA are complex areas. And she was engaged in running a busy and successful business. So she paid for professional financial advice. And when she was told that the advice she'd been given was unsuitable, she raised a complaint. It was inconceivable that she would have delayed complaining, if she'd known sooner that she had cause for complaint.

TenetConnect said that the complaint Mrs O originally made to it only related to the advice provided between 2012 and 2015. So our Service didn't have jurisdiction to consider the advice from 2016 onwards, until TenetConnect had had the eight weeks it was entitled to in order to investigate and respond to those points. It said Mrs O hadn't provided all the information TenetConnect required, including pension fund values, evidence that a tax charge had been paid, and the accountant's retainer document. And that Mrs O should be compelled to disclose this information as it was relevant to consideration of the time limits.

As agreement couldn't be reached, this complaint was referred for an Ombudsman's decision. Therefore, it was passed to me and I corresponded with both parties and shared my thoughts informally with them.

Initially, I told both parties that I thought Mrs O's complaint about the advice TenetConnect gave her between 2012 and 2015 had been brought too late for our Service to be able to consider it. But that her complaint about the 2016 and 2017 advice had been brought in time, and that TenetConnect had had the opportunity to investigate and provide a response in relation to the advice in 2016 and 2017, if it had wanted to.

And having considered that complaint, I thought TenetConnect didn't need to take any further action. Because both of its 2016 and 2017 advice reports ('Reports') made clear that they set out TenetConnect's understanding of Mrs O's current financial position and that this was what its advice was based on, and that Mrs O should check carefully that it was correct and tell TenetConnect if it wasn't, as it might affect the recommendations it gave her. And the Reports didn't mention her DB pension. So it wouldn't be fair and reasonable to conclude that Mrs O could assume the 2016 and 2017 advice was also based on information provided to TenetConnect about her DB pension years previously in 2013, and that she didn't need to do anything further. Instead, Mrs O ought to have told TenetConnect in 2016 or in 2017 that its Reports didn't include her DB pension, but I'd seen nothing to suggest she did so.

In response, TenetConnect said it had nothing further to add.

Mrs O disagreed with my thoughts. In summary, she said my findings contradicted those of the Investigator who'd looked at the complaint previously. And that I'd misunderstood her complaint and was wrong to say she didn't need to fully understand all the details of her complaint in order for the time limits to start running. Because the issue wasn't awareness of her DB pension (which she was aware of) – the issue was awareness of how DB pensions are treated for AA purposes and how the accrual within them limits the ability to fund contributions to personal pensions. And she provided some further evidence, including a copy of emails dated 15 and 16 December 2017 between her husband Mr H and the TenetConnect adviser.

I shared the December 2017 emails with TenetConnect and asked it for copies of all communications between Mrs O and/or Mr H and the adviser from 2016 onwards. TenetConnect replied to say the complaint had previously only encompassed 2012 to 2015,

so the appointed representative wouldn't have given TenetConnect post-2015 information. But TenetConnect had now asked the appointed representative for this. And given the new evidence provided (the December 2017 communications), TenetConnect asked for a further eight weeks to investigate the 2016 and 2017 advice before our Service could consider it. TenetConnect also asked for copies of Mrs O's contract/retainer with her accountant, evidence of the AA breaches resulting in tax charges for the years 2016 to 2018, and copies of Mrs O's tax returns for the years 2016 to 2018.

After reconsidering all the comments and evidence provided to me, I again contacted both parties to set out my thoughts. I explained that I still thought Mrs O's complaint about the advice TenetConnect gave her between 2012 and 2015 had been brought too late for our Service to be able to consider it. And that I still thought her complaint about the 2016 and 2017 advice had been brought in time, and that TenetConnect had had the opportunity to investigate and provide a response in relation to the advice in 2016 and 2017, if it had wanted to.

And having considered that complaint, I was now satisfied that the December 2017 emails between TenetConnect and Mr H meant TenetConnect was aware of Mrs O's DB pension at that time. But TenetConnect hadn't updated the advice it had given Mrs O in 2016 and 2017, regarding the lump sum pension contributions it had advised her to make, in light of this. I said I thought rule changes meant the LTA issue was no longer relevant. But that TenetConnect should put things right regarding the AA issue by providing Mrs O with an indemnity in respect of her AA charges for the financial years 2016/17 and 2017/18; paying her £701.50 towards her accountancy fees; and paying her £500 compensation for the distress and any inconvenience TenetConnect's error had caused her.

TenetConnect responded to say, in summary, that:

- I'd not initially upheld the complaint about the 2016 and 2017 advice, so there was nothing for TenetConnect to add, dispute or investigate. But new evidence had been introduced and I was now upholding this complaint. So TenetConnect was entitled to eight weeks to investigate and respond, in line with the Financial Conduct Authority's ('FCA') Handbook of Rules and Guidance ('DISP').
- Mr H's tax returns noted his DB pension and this would likely also be the case for Mrs O. So their accountant ought to have been aware of their DB pensions, and had a duty to ask them about their contributions – this would have mitigated any error regarding pension overcontributions. And in line with the accountant's terms of engagement, Mrs O would have provided them with a copy of her 2013 DB scheme superannuation letter, so the accountant should have picked this up when preparing her tax return for that year and subsequent tax years. Therefore, TenetConnect wasn't wholly responsible for any alleged losses for 2016/17 and 2017/18. And DISP 3.6.3 says another respondent can be asked to contribute towards the overall award in the proportion the Ombudsman considers appropriate.
- DISP 3.5.11 says "*The Ombudsman has the power to require a party to provide evidence. Failure to comply with the request can be dealt with by the court.*" So, I must order the disclosure of the annual tax penalties payable for the breach of AA. So far, only the accountant's letter dated 6 October 2022 has been provided, which states what the accountant believes the tax penalties are likely to be. Formal confirmation from HMRC of the final tax penalties due should be provided. If this isn't ordered by our Service or provided by Mrs O and Mr H, TenetConnect will issue legal proceedings to obtain an order for specific disclosure which would need to be dealt with before our Service can conclude Mrs O and Mr H's complaints. The only plausible reason for it not being disclosed is that it demonstrates TenetConnect's causation argument.

- TenetConnect previously asked whether HMRC only applied a tax charge for a breach of AA in 2016/17 or if there have been tax charges for the tax years covering 2012 to 2015, but didn't receive a response. This information is vital, as it would have demonstrated the overpayments, which would then have put Mrs O and Mr H on a course of enquiry to establishing why it happened, to avoid it happening again in future years.
- TenetConnect highlighted a letter sent to Mr H in 2017 by his DB scheme, which provided AA information and instructed him to pass the letter to his tax adviser so it could assess whether he'd exceeded the AA for 2016/17 and if necessary, include any AA charge on the self-assessment tax return. TenetConnect said Mrs O would have received a similar letter. It said these letters should have been passed to their accountant as their tax adviser, so their accountant would have been aware there was an issue with the AA. This ought to have put Mrs O and Mr H on a course for awareness of the issue, as well as ensuring it was not repeated in future years. So Mrs O, Mr H and their accountant hadn't mitigated the loss.

Mrs O also provided further comments and evidence. In summary, she said:

- I'd not understood the basis of the complaint or how the DB scheme works, and I'd 'muddled the waters' by conceding on some points to award nominal compensation.
- TenetConnect was removed as the recorded adviser on their SIPP's in May 2018, but the adviser asked Mrs O and Mr H if they'd continue as his clients at his new firm. They agreed, so he continued as their adviser until February 2020.
- The TenetConnect adviser didn't do or say anything to give Mrs O and Mr H reason to think they had cause for complaint. In order to appreciate there was a problem or potential cause for complaint, they would have had to have knowledge. And they had no knowledge that their DB superannuation contributions counted towards their AA contribution, or any indication that their DB pensions may have an effect on their LTA.
- Mrs O and Mr H retained the TenetConnect adviser to advise on annual investments solely to reduce their tax liability, and to invest in appropriate and tax efficient ways. The adviser had complete access to their accounts and tax returns which detailed their occupational income and their contributions to the related DB pensions. It's not fair to say they ought to have been aware sooner that there was a problem which could cause a loss because they ought to have been aware the DB pension wasn't mentioned. In 2012, the adviser asked for full disclosure of all their assets as he said he'd add this information to his records so that he'd always have it to hand. Mrs O and Mr H provided TenetConnect with all the requested information back in 2012 and 2013. Mrs O and Mr H discussed their DB pensions with him in many meetings and telephone calls between 2012 and 2015 and each time confirmed their circumstances had not changed. So they were confident he had information about their DB pensions.
- Mrs O and Mr H believed their DB pensions to be a 'standalone investment' treated in isolation from any other investment consideration, as this is the position the TenetConnect adviser took – the adviser always said they would leave it aside and that Mrs O and Mr H easily had enough assets to meet their retirement needs. So the value of their DB pensions were simply immaterial to meeting their retirement objectives.
- Mrs O and Mr H hadn't thought the Reports omitting their DB pensions was an error. The adviser had said he'd only produced written Reports to keep the 'back-room people happy' i.e. merely to allow the adviser to meet his compliance requirements. And the adviser suggested the planned retirement ages given in the Reports, which is why they fluctuated so widely. So Mrs O and Mr H didn't give any credence to the contents of the Reports and the adviser told them to just file the Reports away when they received them. They weren't surprised the Reports didn't mention their DB pensions, because if their DB pensions weren't relevant to the proposed pension contributions, why would

they be included in the Reports. So the first time they had actual or constructive knowledge of a cause for complaint was August 2020.

- The AA financial loss figures I'd given were incorrect, as the figure of £11,637.60 for Mr H is a netted off figure based on a correction of venture capital trust ('VCT') subscriptions and the pension increased tax charge. Mrs O and Mr H believe they have already settled all the increased pension tax charges and interest charges by way of payments regarding 2016/17 and 2017/18 to HMRC. So I should contact their previous accountant to verify the situation.
- I've concluded that the 2016 and 2017 advice was poor, so TenetConnect should refund Mrs O and Mr H the £18,449.65 they paid TenetConnect for its services from 2015 to 2017.
- Mrs O and Mr H have themselves been caused significant inconvenience. They've had to provide a significant amount of evidence spanning 2012 to 2020 and estimate they've spent around 130 hours dealing with this complaint. They've had to deal with emails from their solicitor, our Service, and TenetConnect. And they've had to analyse documents, collate emails, speak to their accountant, cross-reference with their new financial adviser, submit a subject access request to TenetConnect, and speak with their DB scheme.
- Further, this complaint has been going on since 2021 and is complex and difficult for a layperson to deal with – especially understanding the complex nature of the rules around the DB pension scheme, AA and LTA. And their current financial adviser said it was a complex case and he couldn't assist in the complaint due to not having the expertise or insurance to do so. So Mrs O and Mr H had no alternative but to instruct a solicitor, who charged them an hourly rate – so far, they'd paid their solicitor over £49,000. So it couldn't be correct to say that Mrs O and Mr H should have dealt with this themselves whilst holding down full-time employment.
- I'd said TenetConnect should provide Mrs O and Mr H with a legally-binding indemnity to compensate any loss caused by exceeding their AA in financial years 2016/17 and 2017/18, and that TenetConnect should meet the costs of drawing up this indemnity. They asked for clarification on whether this included their solicitor's and accountant's costs in checking the validity and suitability of the indemnity. Otherwise, they'd continue to incur costs in relation to the poor advice I'd said TenetConnect gave them in 2016 and 2017.

I'm now in a position to make my decision.

### **What I've decided – and why**

I'd like to start by acknowledging that both parties have provided me with a great deal of comments and evidence. I'd like to assure them that I have carefully considered everything that has been provided. However, my decision won't address everything that has been provided. I mean no discourtesy by this, it's simply that my decision will only address what I see to be relevant in deciding this complaint.

I'd also like to be clear that in this decision, I'm only considering a complaint against TenetConnect. Mrs O says she continued as a client of that adviser when in 2018 the adviser moved from TenetConnect to another firm. But any complaint Mrs O has against the adviser when he was employed by the new firm would need to be directed to that new firm, as TenetConnect was no longer responsible for the adviser.

### Jurisdiction

#### TenetConnect's advice from 2012 to 2015

I appreciate Mrs O feels very strongly that I should consider the merits of this complaint and uphold it. And I've carefully considered all of the comments and evidence provided to me. But I remain of the view that Mrs O's complaint about the advice TenetConnect gave her between 2012 and 2015 has been brought too late for our Service to be able to consider it. I realise this isn't the answer Mrs O hoped for, but I'll explain my reasons.

We don't have a free hand to consider every complaint brought to us. Instead, our ability to consider complaints is set out in Chapter 2 (DISP 2) of the FCA's Handbook of Rules and Guidance. DISP 2.8.2R says:

*The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service...*

- (1) more than six months after the date on which the respondent sent the complainant its final response or redress determination or summary resolution communication; or*
  - (2) more than:*
    - (a) six years after the event complained of; or (if later)*
    - (b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;*  
  
*unless the complainant referred the complaint to the respondent or the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received;*
- unless:*
- (3) in the view of the Ombudsman, the failure to comply with the time limits...was as a result of exceptional circumstances.*

The advice TenetConnect gave Mrs O between the start of their relationship in 2012 up to February 2015 took place more than six years before Mrs O complained about this advice to TenetConnect on 26 July 2021. So Mrs O's complaint about that advice has been brought too late under the six-year part of the DISP time limit rules.

Therefore I need to consider the three-year part of the time limit rules. Under the three-year part of the rules, I need to consider not only when Mrs O did become aware she had cause for complaint, but also when she *ought reasonably to have become aware* she had cause for complaint.

Mrs O says my conclusions contradict those of the Investigator who previously looked at this complaint. And that I've misunderstood her complaint and was wrong to say she didn't need to fully understand all the details of her complaint in order for the time limits to start running. That the issue isn't awareness of her DB pension (which she was aware of) – the issue is awareness of how DB pensions are treated for AA purposes and how the accrual within them limits the ability to fund contributions to personal pensions. Mrs O says the rules around AA and how contributions are calculated when a consumer has a DB pension are extremely complicated and it is unreasonable to expect an unqualified person to be aware of these rules, their application, and their consequences on additional contributions to a personal pension. That she, as a layperson, was reliant on her adviser and did not gain knowledge of the problem until her new financial adviser pointed this out to her in August

2020. And I'd muddled the waters by conceding on some points to award nominal compensation.

I understand that Mrs O might prefer the conclusions reached by the Investigator who previously looked at her complaint. But agreement could not be reached, and so this complaint was referred to me. And my role here is to consider all of the evidence afresh in order to reach my own conclusions.

For clarity, by cause for complaint I mean cause to make this complaint about this respondent firm, TenetConnect. In other words that there's a problem which has or may cause Mrs O a financial loss and that TenetConnect may have a responsibility for that problem.

Mrs O says the TenetConnect adviser didn't do or say anything to make her think she had cause for complaint, and that she didn't know about the impact of her DB pension and contributions on her AA and LTA. Nonetheless, it is the case that the DISP time limit rules do not require a complainant to be aware of every last factual detail or formal ground for their complaint, or to have a high degree of certainty about relevant points in order to have awareness of cause for complaint. So Mrs O did not need to know the precise grounds on which she now makes her complaint about TenetConnect's advice, which is that it failed to take into account the increased value of her DB pension for the purposes of assessing her available AA. Instead, she simply needed knowledge, actual or constructive, that there's a problem which has, or may, cause her a financial loss and that TenetConnect may have a responsibility for that problem.

I've seen that the letter dated 21 March 2013 addressed to Mrs O by her DB pension scheme made clear that her DB pension was estimated at that time to provide her with an annual pension of £12,464.58 plus a lump sum of £37,393.74. This letter was clearly received, as Mr H forwarded it to TenetConnect on 26 March 2013 saying, "*Copies of our [occupational DB] pension details for your records.*"

By the time TenetConnect came to advise Mrs O in 2016, she was age 57 and had brought her preferred retirement age forward – she wanted to retire relatively soon, at age 60. The 'Report and Recommendation' document dated 28 September 2016 that TenetConnect prepared for Mrs O started by saying,

*"Important Information*

*It is my intention to offer you the best possible service and financial advice. As a consequence of our recent conversations and as a matter of course, I have produced this letter setting out my recommendations regarding your current financial position, aims and objectives, based on the information provided to me in the enclosed copy of the Client Questionnaire on 9th September 2016 at our meeting at your home.*

...

*In this report I have presented my understanding of your current situation and your aims and objectives. This provides the basis for my recommendation. You should check carefully that the information is correct but if you feel that it is not a true reflection of your situation, or if your circumstances have changed, then please let me know as this may affect my recommendations."*

This Report went on to record that "*You both wish to retire at the age of 60 on a net salary in today's terms of £60,000 each per annum.*" It listed Mrs O's assets and existing pension plans, but it made no mention anywhere of her occupational DB pension - the only pension listed for her in the section titled 'Existing Pension Plans' was Mrs O's SIPP. And the Report said medium growth rate projections showed this could provide Mrs O with tax free cash of £141,000 plus an annual income of £19,100 at age 60. This Report went on to say,



*“Whilst these pension holdings in isolation may not provide you with the £60,000 income you each seek in retirement, if you continue to fund annually and take your other holdings into consideration, the figure of £60,000 could be achieved.”*

...

*“How does my recommendation affect for [sic] Retirement Aims and Objectives?*

*Whilst your retirement plans are not set in stone at present, you are looking to target a net income of £60,000 each per annum hopefully from the age of 60. This income will come from pension and investment income together with the money you hold on deposit and the possible sale of your business which is worth £800,000. It is your intention to maximum fund your pensions and ISAs where possible for the foreseeable future in order to increase the funds available to provide you with your retirement income. You do have the option to downsize in the future should you wish to.*

*Taking your overall wealth and the above information into account, I believe that a figure of £60,000 per annum each during retirement should be achieved.”*

So in September 2016, Mrs O wanted to retire quite soon and was seriously considering, and discussing with TenetConnect, how she could achieve the £60,000 of retirement income she wanted each year. And TenetConnect told her that her £60,000 of annual retirement income could be achieved *if* she continued to make significant additional payments into her SIPP and used her other assets listed in the Report – which did not include her DB pension.

Given all this, I think by this point Mrs O ought reasonably to have questioned with TenetConnect why it hadn't made any reference to her estimated annual occupational DB pension of £19,100 in the advice in which it said she'd need to continue making significant annual contributions to her SIPP in order to reach the amount of retirement income she wanted. This wouldn't have required any specialist knowledge on Mrs O's part – she simply needed to know she had DB pension benefits, which Mrs O agrees she knew.

Mrs O says she hadn't thought that her DB pension being omitted from the Reports was an error. Because at the start of their relationship, the adviser asked her for full disclosure of her assets so that he'd always have this information for his records, and she provided details of her DB pension, and discussed it with him many times and confirmed that her circumstances had not changed. And verbally, the adviser had led her to believe that her DB pension was a standalone investment to be treated in isolation, and was immaterial to meeting her retirement objectives. And he'd told her that he'd only produced the written Reports to meet his compliance requirements and she should just file them away when she received them.

In my view, a financial adviser telling a client to essentially disregard their written advice reports, as Mrs O suggests, should in itself have been cause for concern about the adviser. And even a brief reading of the 2016 Report would reasonably have suggested there was a cause for concern. Because the Report starts by making clear that it sets out TenetConnect's understanding of Mrs O's current financial position and that this was what its recommendations were based on, and that Mrs O should check carefully that it was correct and tell TenetConnect if it wasn't, as it might affect the recommendations it gave her. Yet the Report doesn't reflect or mention what Mrs O says the adviser verbally led her to believe - that her DB pension was a standalone investment to be treated in isolation and was immaterial to meeting her retirement objectives.

So by September 2016, I think Mrs O ought reasonably to have been aware that TenetConnect hadn't taken account of her occupational DB pension, which is the matter she now complains of – the losses she says she's been caused flow from this. Therefore, I think

Mrs O's complaint about the advice TenetConnect gave her from 2012 up to February 2015 has been brought too late under the three-year part of the DISP time limit rules.

TenetConnect hasn't consented to our Service considering Mrs O's complaint about the advice between 2012 and 2015. Therefore, we could only consider it if I thought there were exceptional circumstances that had prevented Mrs O from complaining about it within the relevant time limits. But the bar for exceptional circumstances is a high one – the example given in the DISP rules is that of a consumer being incapacitated. And I don't think anything Mrs O or her solicitor has told us about amounts to exceptional circumstances.

Therefore, I think Mrs O's complaint about the advice TenetConnect gave her between 2012 and 2015 has been brought too late for our Service to be able to consider it.

I know Mrs O says that if TenetConnect had addressed the concerns its compliance department raised in 2013, the matter she complains of wouldn't have occurred. But as I say, I think Mrs O's complaint about the advice given between 2012 and 2015 has been brought too late for our Service to be able to consider it. And so I can't consider whether TenetConnect made an error in 2013 in relation to the suitability of the advice it gave her.

#### TenetConnect's advice in 2016 and 2017

The evidence provided shows that TenetConnect advised Mrs O and her husband Mr H on 26 September 2016 and on 17 November 2017, less than six years before Mrs O raised her complaint about its advice with TenetConnect on 26 July 2021. Therefore, her complaint about its 2016 and 2017 advice has been brought in time under the six-year part of the rules and so is a complaint we can consider. Therefore, I have considered the merits of this complaint.

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

I've also taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Business ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The below is not a comprehensive list of the rules and regulations which applied at the time of the 2016 and 2017 advice, but provides useful context for my assessment of TenetConnect's actions here:

- PRIN 2: *A firm must conduct its business with due skill, care and diligence.*
- PRIN 6: *A firm must pay due regard to the interests of its customers and treat them fairly.*
- COBS 2.1.1R: *A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).*
- The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability.

TenetConnect says the complaint Mrs O initially raised with it only related to its 2012-2015 advice. And I'd not initially upheld the complaint about the 2016 and 2017 advice, so there was nothing for TenetConnect to add, dispute or investigate. But new evidence had been

introduced and I was now upholding this complaint. So TenetConnect should now have the eight weeks to investigate this and respond that the rules entitled it to.

But it's still the case that TenetConnect was aware in March 2023 that Mrs O's complaint might also be about the 2016 and 2017 advice. And when I previously explained to TenetConnect that I thought it had had the opportunity to investigate and respond, it appeared to accept this. I've also informally shared my thoughts and the new evidence (the December 2017 emails between Mr H and TenetConnect) with TenetConnect and given it the opportunity to respond. So overall, I remain of the view that TenetConnect has had the opportunity to investigate and provide a response in relation to the advice in 2016 and 2017, if it had wanted to do so.

Mrs O says that, since she told TenetConnect about her DB pension in 2012 and 2013 and her related employment continued, TenetConnect should reasonably have assumed she still held a DB pension, and it was reasonable for her to assume that TenetConnect had taken this into account when advising her. And any competent and reasonable adviser would have seen her occupation and asked if she had a DB pension and what contributions she was making to it.

But every time TenetConnect gave Mrs O advice, it was a fresh opportunity for TenetConnect to gather all the relevant information about her circumstances at that particular time, as her circumstances could change over time. And it was also a fresh opportunity for Mrs O to check that TenetConnect's understanding of her circumstances was correct.

This is reflected in the wording at the start of the September 2016 and November 2017 Reports that TenetConnect prepared for Mrs O. The start of the 2016 and 2017 Reports made identical points, namely that:

*"Important Information*

*It is my intention to offer you the best possible service and financial advice. As a consequence of our recent conversations and as a matter of course, I have produced this letter setting out my recommendations regarding your current financial position, aims and objectives, based on the information provided to me in the enclosed copy of the Client Questionnaire on 1<sup>st</sup> September 2017 at our meeting at your home.*

*...*

*In this report I have presented my understanding of your current situation and your aims and objectives. This provides the basis for my recommendation. You should check carefully that the information is correct but if you feel that it is not a true reflection of your situation, or if your circumstances have changed, then please let me know as this may affect my recommendations."*

I don't have a copy of the Client Questionnaires that TenetConnect's 2016 and 2017 advice was based on, so I don't know if they recorded Mrs O's DB pension. But neither the 2016 Report or the 2017 Report made any mention of Mrs O's DB pension or its benefits.

And as set out above, both the 2016 and 2017 Reports start by making the point that the Report sets out TenetConnect's understanding of Mrs O's current financial position and that this was what its recommendations were based on. And that Mrs O should check carefully that it was correct - and if it wasn't, she should tell TenetConnect as it might affect the recommendations it gave her. So both Reports put the onus back on Mrs O to tell TenetConnect if it hadn't accurately captured her current financial position.

Given all this, I don't think it would be fair and reasonable to conclude that Mrs O could assume that TenetConnect's 2016 and 2017 advice, in which it was discussing her required

retirement income and maximising her SIPP contributions, was also based on information her husband Mr H had sent it about her DB pension several years previously in 2013, and that she didn't need to do anything further.

However, I've more recently been provided with emails dated 15 and 16 December 2017 between the TenetConnect adviser and Mrs O's husband. These show that copies of Mrs O's DB pension statements had been provided to the adviser around that time. Because the adviser says he has reviewed the statements and thinks the numbers look odd, and he'll be asking specific questions of the DB scheme in order to establish how they'd been calculated. The emails also show the adviser was informed that Mrs O was still paying into her DB pension each year. Mrs O says that at a later meeting and in two or three telephone calls, the adviser said the problem was a minor one that could be left as it was - that HMRC was very unlikely to pick up the problem and even if it did, it could be sorted out at that later stage.

I've asked TenetConnect for copies of any further communication its adviser had with Mrs O and/or Mr H from 2016. TenetConnect says it doesn't currently have this but is seeking it. But in any event, based on the emails dated 15 and 16 December 2017, I'm now satisfied that TenetConnect was aware of Mrs O's DB pension at that time. But I've seen nothing to make me think that TenetConnect updated, or otherwise changed, its 2016 or 2017 advice to Mrs O in light of this DB pension.

In my opinion it's fair and reasonable in the circumstances of this complaint to hold TenetConnect accountable for its own failure to comply with its regulatory obligations and to treat Mrs O fairly.

I acknowledge that TenetConnect argues it isn't wholly responsible for Mrs O's loss – that Mrs O and her accountant didn't mitigate her loss, and that DISP 3.6.3 says another respondent can be asked to contribute towards the overall award in the proportion the Ombudsman considers appropriate.

But based on the evidence provided, Mrs O's accountant is not regulated by the FCA and so is not a respondent business. And what I'm considering here is the advice TenetConnect gave Mrs O that meant she's potentially exceeded her AA because TenetConnect didn't take her DB pension into account when it advised her to maximise contributions into her pension arrangement, and didn't update or change its advice in light of Mr H highlighting her DB pension in December 2017. This may result in Mrs O having exceeded her AA for those years and subsequently additional AA charges or penalties from HMRC. And so TenetConnect should bear the consequence of this.

I'm satisfied that it's also the case that if TenetConnect had complied with its own distinct regulatory obligations, the financial loss Mrs O has potentially suffered for 2016/17 and 2017/18 could have been avoided. I've taken everything TenetConnect has said into consideration. And it's my view that it's appropriate and fair in the circumstances for TenetConnect to compensate Mrs O to the full extent of her potential financial loss in respect of the AA for the years 2016/17 and 2017/18. And, having carefully considered everything, I don't think that it would be appropriate or fair in the circumstances to reduce the compensation amount that TenetConnect is liable to pay to Mrs O.

TenetConnect has previously been provided with copies of the accountant's contract and retainer, and a copy of the accountant's letter of 6 October 2022 concerning the resubmission of tax returns, the position with HMRC and the accountant's fees for this work.

However, TenetConnect is also asking for copies of Mrs O's tax returns for 2016 to 2018. And it says that in line with DISP 3.5.11, I must order disclosure of the annual tax penalties

payable for the breach of the AA, i.e. HMRC's formal confirmation of the final tax penalties due. It says that if this isn't disclosed, it will issue legal proceedings to obtain an order for specific disclosure which would need to be dealt with before our Service can conclude Mrs O and Mr H's complaints.

But it is for me to decide what evidence is required to decide this complaint. And I'm satisfied I'm able to decide this complaint on the basis of the evidence already supplied, without requiring any further evidence. Further, I'd like to highlight that the indemnity I'll later set out is subject to Mr H providing HMRC evidence of the AA charges or penalties.

As I say, in any event, the emails dated 15 and 16 December 2017 mean that I'm now satisfied that TenetConnect was clearly aware of Mrs O's DB pension at that time. But I've seen nothing to make me think that in light of this, TenetConnect updated the advice it had given Mrs O in 2016 and 2017 regarding the lump sum pension contributions it had advised her to make.

Taking everything into account, I'm satisfied that TenetConnect made an error here. So I've considered the distress, inconvenience and financial loss this error has caused Mrs O.

I think TenetConnect's error would have caused Mrs O some distress, as she would have been worried for some considerable time that she may be liable for AA and LTA tax charges – in particular, I'm mindful that the previous LTA rules could have led to a significant tax charge.

I've carefully considered everything Mrs O and Mr H have said about the inconvenience they've been caused. But it's still the case that Mrs O engaged professionals (a solicitor, an accountant and a financial adviser) to take action on her behalf, which she's asked our Service to reimburse her for. If Mrs O has herself still been put to significant inconvenience, then that's a matter between her and the professionals she has engaged.

Overall, I still think £500 is fair and reasonable compensation for the distress and for any inconvenience TenetConnect's error caused Mrs O herself.

Regarding financial loss, I must be clear that I'm only considering the financial loss caused by TenetConnect's 2016 and 2017 advice, as it's only Mrs O's complaint about the 2016 and 2017 advice that has been brought in time.

Mrs O says TenetConnect should compensate her for her AA charges. Mrs O's DB pension statements show she contributed to her DB pension in financial years 2016/17 and 2017/18. And the letter date 6 October 2022 from Mrs O's accountant says, amongst other things,

*"For [Mrs O], the value of the return adjustments all relate to the pension savings tax charges and the amounts of the increase in the tax liability are as follows:*

<i>2019/20</i>	<i>1,065.20</i>
<i>2018/18</i>	<i>1,194.00</i>
<i>2017/18</i>	<i>4,255.60</i>
<i>2016/17</i>	<i>604.40</i>

*The amended returns were submitted to H M Revenue & Customs at the same time but so far, H M Revenue & Customs have processed the return amendments for the 2017/18 and 2019/20 years but not for the other two noted above. Given the time delay, it is unlikely that they are able to make the adjustment for the 2016/17 tax year as it is now out of time but we are in dialogue with them to establish the position.*

*Based on the amended returns, [Mrs O] has paid additional tax of £6,054.00 and the resulting interest over the period amounts to £329.05. Of this, £308.08 relates to the amendments to the returns for the pension savings charges.”*

The letter goes on to say that the accountant’s fees for Mrs O and her husband are £1,996 for preparing and resubmitting the amended returns, and £809 for sorting out the allocations and resulting tax liabilities with HMRC. A further £1,396 relates to preparing information for the Financial Ombudsman Service.

Based on this, I’m satisfied that Mrs O is likely to incur an AA charge for the financial years 2016/17 and 2017/18 from HMRC. And I think it’s fair that TenetConnect covers this charge as it results from its failure to take account of Mrs O’s DB scheme when advising her to make contributions to her SIPP. But I can’t be certain what that charge will be for those years. Although Mrs O believes she has already settled all the increased pension tax charges and interest charges, I note her accountant’s letter, which Mrs O has provided as evidence of her loss, says her accountant is still establishing the position regarding the 2016/17 tax year. So I’m not persuaded Mrs O has already settled these charges.

So the most appropriate way to bring this matter to a conclusion is for TenetConnect to compensate Mrs O by way of an indemnity in respect of her AA charges for the financial years 2016/17 and 2017/18.

Therefore, TenetConnect should provide Mrs O with a legally-binding indemnity. This should compensate Mrs O for any loss (including related interest and charges) caused by her exceeding her AA in financial years 2016/17 and 2017/18 as a result of TenetConnect’s 2016 and 2017 advice, subject to Mrs O providing evidence from HMRC. The indemnity should allow for payment of these funds direct to Mrs O if she settles with HMRC.

The indemnity should also allow for payment to be made payable to HMRC. TenetConnect may also require, within the undertaking, that Mrs O take reasonable steps to negotiate any settlement such as providing HMRC with any further information or evidence HMRC requires. These steps must:

- Be set out in advance.
- Be clear and proportionate.
- Not result in a significant protraction in reaching a settlement.

TenetConnect will have to meet the costs of drawing up this indemnity. But this does not include any costs of Mrs O’s solicitor and accountant checking the validity and suitability of the indemnity, as Mrs O has asked – paying for such checking would be a matter for Mrs O if she decides she’d like to have the indemnity checked. This is because if my decision is accepted by Mrs O, my decision is legally binding on TenetConnect. So, subject to evidence of the AA charges being provided, TenetConnect would be bound to cover those charges.

Mrs O also says TenetConnect should compensate her for her LTA charges. Her complaint was originally brought to us when a different set of LTA rules were in force. But these have since changed and it’s not possible to know whether, when or how the rules may change again in future. But under the current rules, I’m not persuaded that there is, or is likely to be, a financial loss in relation to her LTA. Therefore, I’m not asking TenetConnect to do anything in relation to Mrs O’s LTA.

In addition, Mrs O says TenetConnect should compensate her for the cost of additional legal, financial and accountancy services. And that TenetConnect should also reimburse her and Mr H the £18,449.65 they paid TenetConnect for its services from 2015 to 2017.

Regarding Mrs O's legal costs, I understand these are in relation to raising this matter with TenetConnect and our Service. And I've considered all the points Mrs O has made about this. But I still don't think that the only way Mrs O could pursue this complaint was with legal representation. As I've explained, Mrs O herself only needed to know that there's a problem which has or may cause her a financial loss and that TenetConnect may have a responsibility for that problem. She could herself have raised this complaint with TenetConnect, and if she wasn't happy with its response, she could have referred her complaint to the Financial Ombudsman Service simply by contacting us through a call, email or letter. We are an informal dispute resolution service. A complaint made to us need not be, and rarely is, made out with the clarity of formal legal pleadings. Our Service deals with complaints, not causes of action. As part of our investigation process, we use our inquisitorial remit and gather whatever evidence we think is necessary. So in my view it was Mrs O's choice to engage a solicitor in this matter, and it wouldn't be fair or reasonable for me to say TenetConnect should pay for that choice.

Regarding Mrs O's financial adviser costs, I note that Mrs O has engaged the services of a financial adviser for a number of years, before and after her involvement with TenetConnect. Her financial affairs are not simple, so I can understand why. But this means that I think Mrs O would have been paying a financial adviser for their services and advice in any case, regardless of the exact specifics of the issue(s) they were dealing with at one time to the next.

And for a similar reason, I'm not asking TenetConnect to reimburse the £18,449.65 Mrs O says she and Mr H paid it for its services from 2015 to 2017. As I've said, I'm only considering the financial loss caused by TenetConnect's 2016 and 2017 advice. And further, while TenetConnect made an error, it nonetheless provided Mrs O with various financial services and advice in this period.

Regarding Mrs O's accountancy costs, again, I can see that she has engaged an accountant for many years, before and after her involvement with TenetConnect, and I can understand why. So Mrs O would have been paying for accountancy services in any case.

That said, her accountant's letter of 6 October 2022 makes clear the accountant has amended previously submitted tax returns for four financial years (2016/17, 2017/18, 2018/19, and 2019/20) and resubmitted them to HMRC, and is working to sort out the allocations and resulting tax liabilities with HMRC. And that the accountant is charging Mrs O and her husband a total of £2,805 for this (£1,996 plus £809). It follows that Mrs O's half of this total would be £1,402.50.

As I've explained, I'm only considering financial loss caused by TenetConnect's advice in 2016 and 2017, as these are the only complaints that have been brought in time. But it's clear that some of the accountant's £1,402.50 fees are for correcting Mrs O's AA liability for 2016/17 and 2017/18, following TenetConnect's failure to take her DB pension into account in its advice. So I think it's fair and reasonable for TenetConnect to cover that portion of the accountant's fee.

The accountant's fee isn't broken down by financial year being worked on. So I think a fair and reasonable way to apportion the fee for the work covering Mrs O in 2016/17 and 2017/18 is to divide the accountant's fee for Mrs O (£1,402.50) by the number of financial years they are working on (four), to give a fee per financial year - approximately £350.62. So the accountant's fee for the work in respect of 2016/17 and 2017/18 for Mrs O totals £701.25, and TenetConnect should pay this amount to Mrs O.

## **My final decision**

For the reasons set out above, the complaint about the advice between 2012 and 2015 has been brought too late for our Service to be able to consider it.

However, the complaint about the 2016 and 2017 advice has been brought in time and I am upholding it. To put things right, TenetConnect Limited should:

- Provide Mrs O with a legally-binding indemnity as set out above.
- Pay Mrs O £500 compensation for her distress and inconvenience.
- Pay Mrs O £701.50 towards her accountancy fees, as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O to accept or reject my decision before 12 April 2024.

Ailsa Wiltshire  
**Ombudsman**