DRN-4948103

The complaint

Mr M complains about administration fees charged by Dentons Pension Management Limited on his Self-Invested Personal Pension (SIPP). He says the fees charged are unfair and unjustified because his SIPP has effectively been frozen due to the liquidation of the Woodford Equity Income Fund ("WEIF"), so there's no need for Dentons to do any administration. He says he's unable to stop the fees or move his SIPP to a different provider. To resolve his complaint, Mr M wants Dentons to refund the administration fees it has charged him and to stop charging him going forward.

What happened

Mr M holds a SIPP operated by Dentons, within which he holds an investment in the WEIF via a wrap account with a third party. Trading in the WEIF was suspended in June 2019 before it was put into liquidation in October 2019.

On 2 July 2020 Mr M transferred the assets in his SIPP, except for the WEIF and some cash, to a different provider. Since then Dentons charged and continues to charge Mr M a standard annual administration fee for operating the SIPP. It also charged general administration fees calculated on a time-cost basis for activities that weren't covered by its standard annual administration fee. The fees charged were set out to Mr M in annual statements Dentons sent him alongside a copy of its fee schedule for that year.

Mr M complained to Dentons in February 2022 and Dentons rejected his complaint on the basis that:

- Its administration fees are justified by the actions it has taken to fulfil the ongoing regulatory requirements in operating the SIPP, and it has been very transparent about the fees it charges.

- It has levies and regulatory costs to pay, especially as the WEIF is a "non- standard" investment. It didn't advise Mr M to invest in the WEIF and until it has been fully liquidated, the SIPP can't be closed and it'll need to charge fees to cover its costs.

Mr M didn't accept Dentons' response, so he referred his complaint to us to investigate.

One of our investigators looked into his complaint and concluded it should be upheld. In summary, he said that Dentons was obligated to pay due regard to Mr M's interests and treat him fairly under the Financial Conduct Authority's (FCA) Principles.

He said that the charges Dentons was applying to Mr M's SIPP didn't, in essence, reflect the work that Mr M's SIPP involved – there were no contributions or other investments besides the WEIF and he wasn't persuaded that the fees Dentons was charging reflected the work on a time-costed basis, except for those which were clearly about specific administration tasks that arose at Mr M's or his financial adviser's request. The investigator therefore recommended that Dentons refund Mr M's standard administration fees and stop charging

him these fees going forward.

Mr M agreed with the investigator but Dentons did not. It provided detailed comments:

- It said Mr M chose to move his other investments to a different SIPP provider in July 2020, thus duplicating administration fees. Had he kept his other investments with Dentons, then the fees it was charging would not be deemed unfair.

- It was therefore the case that the investigator had upheld Mr M's complaint based on the "negligible" value of his SIPP. However, Dentons said that the costs it incurred in administering Mr M's SIPP were the same regardless of the value of his SIPP. It said:

  "Our charges are clearly set out in our fee schedule. Our clients are not charged based on fund size, they are charged based on the work we do. The fundamental tasks that we must carry out are covered / paid for by our Standard Administration fee and these tasks must be carried out irrespective of the value of a SIPP."

It explained that its Standard Administration fees covered:

- Preparation of the annual financial statement
- Retirement illustrations
- Bank reconciliations
- Reclaiming tax relief on pension contributions

It said that these played an "essential part in the administration of a SIPP and all these tasks take up time and resource". It said that for example, the "preparation of a financial statement, for instance, requires liaison with third party companies as we must obtain and include in our statements, current values, costs, charges, growth rates, and so forth". Furthermore, its Standard Administration fee also made allowance to "cover typical business overheads of operating a SIPP". These included:

- FSCS Compensation Levy
- FOS Levy
- Financial Guidance Levy
- Financial Crime Levy
- TPR Levy
- Data Protection Registration
- Legal fees including updates to scheme documentation
- The cost involved with ongoing submission of FCA quarterly returns
- The Capital Adequacy Requirement prescribed by the FCA.

Dentons said these levies did not "cease to apply or reduce if one or more of our SIPPs has a particularly low value" and said some of these costs, such as the FSCS Compensation

Levy or its PI Insurance, increased in the event of failed investments. It said the only requirement that ceased to apply, as the SIPP had a value of less than £5,000, was the requirement to "SMPI alongside the annual statement".

In separate submissions it reiterated its view that the value of Mr M's SIPP was irrelevant to the above costs and what it was required to do in administering the SIPP – and said the logical consequence of the investigator's conclusions was that if all its clients had invested in the WEIF, then it would be required to administer its entire SIPP book at less than cost.

It also said that Mr M signed a contract and was aware of the terms when he signed up. Dentons said that Mr M's decision to move his other investments to another provider did not entitle him to renege on the contract.

I issued a provisional decision in August 2024. In it I said:

Relevant considerations

When considering what's fair and reasonable in this complaint, I consider the FCA Principles for Businesses to be of particular relevance.

The Principles for Businesses ("PRIN") which are set out in the FCA's Handbook "are a general statement of the fundamental obligations of firms under the regulatory system" (PRIN 1.1.2G).

In addition, in British Bankers Association, R (on the application of) v The Financial Services Authority & Anor [2011] EWHC 999 (Admin) (20 April 2011) Ousely J said:

"Indeed, it is my view that it would be a breach of statutory duty for the Ombudsman to reach a view on a case without taking the Principles into account in deciding what would be fair and reasonable and what redress to afford. Even if no Principles had been produced by the FSA, the FOS would find it hard to fulfil its particular statutory duty without having regard to the sort of high level principles which find expression in the Principles, whoever formulated them. They are the essence of what is fair and reasonable, subject to the argument about their relationship to specific rules" (para 77).

"…The Principles are best understood as the ever present substrata to which the specific rules are added. The Principles always have to be complied with. The specific rules do not supplant them and cannot be used to contradict them. They are but specific applications of them to the particular requirements they cover. The general notion that the specific rules can exhaust the application of the Principles is inappropriate. It cannot be an error of law for the Principles to augment specific rules" (para 162).

I therefore consider that alongside Dentons' obligations to provide certain services with respect to the SIPP Mr M had, it also had to consider and apply the Principles. I consider Principle 6 to be of particular relevance:

Customers' interests – A firm must pay due regard to the interests of its customers and treat them fairly.

In September 2009 the FSA published a thematic review report on SIPPs which stated:

"We are very clear that SIPP operators, regardless of whether they provide advice, are bound by Principle 6 of the Principles for Businesses ('a firm must pay due regard to the interests of its customers and treat them fairly') insofar as they are obliged to ensure the fair treatment of their customers."

The context that these comments were made are in relation to the quality of the business that a SIPP operator accepts – it's not in my view in dispute that the WEIF was a type of investment that was not inappropriate for Mr M to hold in his SIPP. But the comments above are relevant in that the FSA's comments show that it considered SIPP operators were obliged to ensure fair treatment of their customers.

So, I've carefully considered Denton's obligation to treat its customers (and specifically Mr M) fairly when deciding what is fair and reasonable in the circumstances of this complaint.

I've also taken into account the agreement that Mr M had with Dentons and what it says about the fees Mr M was liable to pay Dentons, as well as what services Dentons said it would provide in return.

My provisional findings

I realise the fees Dentons has charged and is charging Mr M are covered by the terms of the SIPP and so it is contractually entitled to collect them. But I'm required to consider whether that's fair and reasonable in the wider circumstances. Mr M's SIPP holds a single asset. The investment has become illiquid and is effectively worthless at present – although it'll likely have some residual payment coming out of the Scheme of Arrangement between the fund's Authorised Corporate Director and investors. But Mr M can't sell his investment or add to it.

The above situation has resulted in Mr M being unable to transfer that asset or close the SIPP. Having reviewed everything provided to me by both parties, in the circumstances, I don't think Dentons has treated Mr M fairly – and so I can't say it has acted in a fair and reasonable manner. I do accept that as a commercial business, there is a cost to Dentons providing administration of that SIPP. But the fees Dentons levy upon Mr M must be fair.

As I've said, I understand there are a number of tasks and responsibilities that may be required to be carried out in relation to the administration of a SIPP. In response to the investigator's assessment, Dentons hasn't evidenced what particular action has been required to administer Mr M's SIPP specifically, but it has evidenced some costs which it says still apply regardless of the size of Mr M's SIPP. So I am satisfied there are still costs associated with Mr M's SIPP which I agree Mr M ought to contribute to.

In looking at Dentons most recent terms and conditions, it explains in "Schedule of Services" what the standard administration it provides covers. This includes:

- *Setting up and maintaining database records;*
- *Receiving and recording of contributions into the Plan;*
- *Reclaiming tax relief on contributions to the Plan;*
- *Ongoing liaison with investment managers;*
- *Monitoring the Plan's default sterling bank account together with any additional bank accounts and checking bank statements.*
- *Obtaining and checking periodic portfolio valuations from investment managers;*
- *Production of an annual financial statement;*
- *Production of an annual statutory money purchase illustration;*

- *Ongoing monitoring of the requirements of HMRC and those of any other relevant body, including updating of documentation to ensure continued compliance with all appropriate regulations;*

- *Responding to the routine information reporting requirements (including periodic audits) regarding the Plan as required by HMRC and other appropriate bodies;*

- *Updating of scheme documentation to ensure that the Plan continues to adhere to HMRC requirements*

Taking the above items as a reasonable basis for the type of work that Dentons would usually expect to have to do in relation to the administration of a SIPP, it's clear to me that the majority of these items of work don't apply to Mr M's situation. Even if there is some pro-forma administration that is still required, it's clear that Dentons doesn't need to liaise with an investment manager, reclaim tax relief, receive or record any contributions for example. This means that whilst Dentons is still charging Mr M a "standard" administration fee, it isn't carrying out all or even most of the work that a "standard" administration fee is usually designed to pay for. In my view this is what the investigator was referring to when talking about Mr M's SIPP not being a "standard" SIPP. This is the reason why I don't think it's fair and reasonable to simply conclude that since the terms and conditions entitle Dentons to collect these fees, then it needn't consider Mr M's specific circumstances nor, indeed, the work it is actually doing for Mr M in exchange for those fees.

Furthermore, the issue isn't specifically about the value of Mr M's SIPP. The investment Mr M has will never become liquid again – there will be no further contributions to it and any further residual payments will be received via the Scheme of Arrangement into his SIPP. So there is no further work or liaising which Dentons needs to do on his behalf, which might otherwise be required in other circumstances – and which, ultimately comprise a substantial portion of what its standard fee is for.

In response to the investigator's view, Dentons has highlighted the hypothetical scenario of all of its clients being invested in the WEIF and nothing else, and what this decision would mean in those circumstances.

I'm not persuaded by that argument – but in any event, I'm required to decide this case based on what I consider is fair and reasonable in the circumstances of Mr M's specific complaint.

Furthermore, I consider that in determining what is fair and reasonable in this case, a relevant consideration is the fact that Mr M is not responsible for what has happened to the WEIF. I'm not persuaded a fair and reasonable outcome includes Mr M continuing to be responsible for a fee which no longer fully represents a service being provided to him, for a product he no longer wants but can't, through no fault of his own, relinquish and with no clear end point.

Taking all this into account, I'm satisfied that the fees Dentons has charged Mr M since he decided to transfer the remainder of his SIPP to another provider are not fair and reasonable.

But I'm of the view that a full refund of those fees would not be fair and reasonable either. I say this because I consider that Mr M ought to bear some of the financial costs associated with his SIPP, given that he agreed with those costs when he opened his SIPP with Dentons, and knew that they'd apply once he transferred all his other investments, except for the WEIF, to another provider.

As I've said above, Dentons bears no responsibility for the failure of the WEIF nor Mr M's decision to invest in it – and there's no suggestion that the WEIF itself was inherently not appropriate for Mr M's SIPP. And for similar reasons, I also don't think it's fair and reasonable that the costs of administering Mr M's SIPP, however limited, should be borne entirely by Dentons.

So taking into account what Dentons has said it does in the normal course of administering a SIPP like Mr M's and Mr M's specific circumstances, I'm satisfied he should only bear 25% of the standard administration fee Dentons would normally charge. I've chosen this figure taking into account:

- *The likely level of actual work associated with Mr M's SIPP bearing in mind what I've said above – namely that in the presence of some actual administration costs involved in administering Mr M's SIPP, he should be required to contribute;*

- *The fact that the situation is not of Mr M's making and so it's not fair and reasonable that he should be obliged, for an indeterminate period of time, to continue to be liable for the majority of standard fees for a product he no longer wants or is able to close, and for which he is not receiving a "standard" service.*

I'm satisfied that this proportion should simply be deducted from whatever pay-out Mr M receives from the Scheme of Arrangement – so that if what he receives from the Scheme is less than the total fees which remain due, then he won't be responsible for any additional fees.

This means that I'm provisionally concluding that Dentons needs to:

- *Refund the fees it has collected from Mr M (minus any time costed fees for services Mr M or his adviser specifically requested);*

- *Not chase or demand payment of any further fees (unless these are agreed in advance for specific services);*

- *Calculate what the total fees due would be from the date Mr M transferred his other investments to another SIPP until the date he receives the first payment from the Scheme of Arrangement, and deduct only 25% of those fees from that sum;*

- *Calculate what the total fees due would be from the date of that first payment and deduction until Mr M's SIPP can be closed following the final payment from the Scheme of Arrangement and deduct only 25% of those fees from that sum.*

- *If the first and final payment from the Scheme of Arrangement are one and the same, then only one deduction needs to be made and the SIPP can be closed, with no further fees accruing. However my understanding is that the Scheme of Arrangement has or is in the process of making an initial payment and a final, subsequent payment, will be made once the Authorised Corporate Director's assets have been sold.*

- *Transfer the balance, if there is one, in accordance with Mr M's instructions and in line with applicable rules.*

I also think that the matter has caused Mr M considerable distress and inconvenience, particularly because Dentons has declined to attempt to find a bespoke solution for him and instead continued to chase or demand payment for these invoices. I'm satisfied £500 is fair

and reasonable compensation for that.

Comments in response to my provisional decision

Mr M agreed with my provisional findings. Dentons didn't and provided some additional comments.

In summary, it said:

- Its standard administration charge applied irrespective of the value of a SIPP and it said it believed this was the correct and fair approach. It reiterated that this charge covered its regulatory requirements.

- It said that the standard administration charge was "*the bedrock"* of its revenue and as such it was required to cover its business overheads, all of which will still apply irrespective of the number of assets or value of a client's SIPP. It said a SIPP with distressed assets increases its overheads (PI Insurance, as an example). It said its charges relating to investment administration are charged on a time-cost basis as per its fee schedule.

- It said that if the approach I set out in the provisional decision was applied, it would have the effect that schemes with sound investments would be cross-subsidising those with failed investment strategies. It queried how that could be right or equitable for those investors.

- Dentons said that Mr M was in this predicament because he selected an investment which is now illiquid, and he decided to proceed with a partial transfer out when he knew that his Dentons SIPP could not be closed. It said it accepted my finding that the investment in question was a standard investment at that time and that it was not "inappropriate" for Mr M's SIPP. However it said that Mr M should be held accountable for his own actions.

- It said that pension providers may permit partial transfers to other pension schemes / providers at their discretion. Historically, it said that Dentons have permitted such transfers and we will continue to do so on request in order to provide good outcomes for its clients. However, in 2020 when it was known that a full transfer out was not available to Mr M due to the illiquidity of the WEIF, it queried whether the ombudsman would have deemed it fair and reasonable for Dentons to have rejected Mr M's request for a partial transfer out. It said that if Dentons had opted to decline Mr M's request, it would still be operating Mr M's SIPP, including a portfolio of investments held via an Aviva GIA, and it said in those circumstances its standard administration charge would be deemed satisfactory.

What I've decided – and why

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

I'd like to thank Dentons for its comments in response to my provisional decision.

I can confirm that I've considered everything it has said. I think it's helpful to confirm that the

service doesn't operate on the basis of precedent like the courts would – each complaint is decided on its own facts and so my decision is based on the specific circumstances of Mr M's case.

I accept that its standard charge applied irrespective of the value of a SIPP and that it covers a number of standing items which would continue to apply to its business regardless of the value of Mr M's SIPP. My role isn't to second guess this charge but to decide whether, in the particular circumstances of Mr M's case, it was fair and reasonable for it to have charged Mr M as it did.

As I said in my provisional decision, I agree that Mr M ought to accept some of the financial costs associated with his SIPP. So I agree that whilst Mr M isn't responsible for the WEIF becoming illiquid, it is an investment he decided to invest in – and he decided to transfer the remainder of his SIPP away.

But I remain of the view that it isn't fair and reasonable for Mr M to continue to be responsible for a fee which no longer fully represents a service being provided to him, for a product he no longer wants but can't, through no fault of his own, relinquish and with no clear end point. And I'm not persuaded that the findings in this particular case mean that I'm saying liquid investments would be cross-subsidising failed or illiquid investments. I'm finding that in Mr M's case, Dentons ought to have had a fair and reasonable arrangement which reflected the specific circumstances of his case – in such a way as to ensure a contribution to the costs of running his SIPP, whilst recognising the specific circumstances I've outlined above and in my provisional decision. In my view this is consistent with Dentons' obligations that I set out in my provisional decision.

I understand why Dentons has asked a hypothetical question about what might have been different had it chosen to deny Mr M permission to effect a partial transfer of his SIPP assets. In those circumstances, I'd need to consider the way Dentons exercised its discretion, the reasons that led to it denying Mr M permission and the impact this had on him in order to decide whether it acted fairly and reasonably. But since this hasn't happened, I'm not persuaded it would be helpful to make hypothetical findings on this.

I should be clear that I'm not dismissive of Dentons comments and I understand why it continues to believe that it ought to be allowed to charge its standard fee irrespective of what's happened to Mr M's investment in the WEIF. However, for the reasons I've given above and in my provisional decision (and which I emphasise below), I'm satisfied my award is fair and reasonable in the particular circumstances of Mr M's case.

Putting things right

As I've said above and in my provisional decision, I consider that in determining what is fair and reasonable in this case, a relevant consideration is the fact that Mr M is not responsible for what has happened to the WEIF. As I've said, I'm not persuaded a fair and reasonable outcome includes Mr M continuing to be responsible for a fee which no longer fully represents a service being provided to him, for a product he no longer wants but can't, through no fault of his own, relinquish and with no clear end point.

Taking everything into account, I'm satisfied that the fees Dentons has charged Mr M since he decided to transfer the remainder of his SIPP to another provider are not fair and reasonable.

But for the reasons I've given, I remain of the view that a full refund of those fees would not be fair and reasonable either. I say this because I consider that Mr M ought to bear some of the financial costs associated with his SIPP, given that he agreed with those costs when he

opened his SIPP with Dentons, and knew that they'd apply once he transferred all his other investments, except for the WEIF, to another provider.

It's clear that Dentons bears no responsibility for the failure of the WEIF nor Mr M's decision to invest in it – and there's no suggestion that the WEIF itself was inherently not appropriate for Mr M's SIPP. And so for similar reasons, I also don't think it's fair and reasonable that the costs of administering Mr M's SIPP, however limited, should be borne entirely by Dentons.

Therefore, taking into account what Dentons has said it does in the normal course of administering a SIPP like Mr M's and Mr M's specific circumstances, I'm satisfied he should only bear 25% of the standard administration fee Dentons would normally charge. I've chosen this figure taking into account:

- The likely level of actual work associated with Mr M's SIPP bearing in mind what I've said above – namely that in the presence of some actual administration costs involved in administering Mr M's SIPP, he should be required to contribute;

- The fact that as Dentons has said there remain overheads and costs associated with running Mr M's SIPP which will continue to apply regardless;

- The fact that the situation is not of Mr M's making and so it's not fair and reasonable that he should be obliged, for an indeterminate period of time, to continue to be liable for the majority of standard fees for a product he no longer wants or is able to close, and for which he is not receiving a "standard" service.

I'm satisfied that this proportion should simply be deducted from whatever pay-out Mr M receives from the Scheme of Arrangement – so that if what he receives from the Scheme is less than the total fees which remain due, then he won't be responsible for any additional fees.

This means that I'm concluding that Dentons needs to:

- Refund the fees it has collected from Mr M (minus any time costed fees for services Mr M or his adviser specifically requested);

- Not chase or demand payment of any further fees (unless these are agreed in advance for specific services);

- Calculate what the total fees due would be from the date Mr M transferred his other investments to another SIPP until the date he receives the first payment from the Scheme of Arrangement, and deduct only 25% of those fees from that sum;

- Calculate what the total fees due would be from the date of that first payment and deduction until Mr M's SIPP can be closed following the final payment from the Scheme of Arrangement and deduct only 25% of those fees from that sum.

- If the first and final payment from the Scheme of Arrangement are one and the same, then only one deduction needs to be made and the SIPP can be closed, with no further fees accruing. However my understanding is that the Scheme of Arrangement has or is in the process of making an initial payment and a final, subsequent payment, will be made once the Authorised Corporate Director's assets have been sold.

- Transfer the balance, if there is one, in accordance with Mr M's instructions and in line with applicable rules.

I also think that the matter has caused Mr M considerable distress and inconvenience, particularly because Dentons has declined to attempt to find a bespoke solution for him and instead continued to chase or demand payment for these invoices. I'm satisfied £500 is fair and reasonable compensation for that and so that's what I award.

My final decision

My final decision is that I uphold Mr M's complaint and make the award above. Dentons Pension Management Limited must pay any sums due and comply with my award within 28 days of when we tell it Mr M has accepted this final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 3 October 2024.

Alessandro Pulzone
Ombudsman