DRN-5185743

The complaint

Mr W's complaint primarily concerns an investment made in an investment called the Centaur Bond, in a self-invested personal pension (SIPP) provided by Dentons Pension Management Limited (Dentons). In summary, Mr W says Dentons conducted little or no due diligence into the Centaur Bond and, had it conducted sufficient due diligence, it would have concluded the investment was not one it should allow in his SIPP.

Mr W also says Dentons failed to conduct sufficient due diligence into parties associated with the Centaur Bond – namely an Independent Financial Advisor (IFA) and Centaur Asset Management. Mr W considers that sufficient due diligence into these parties would have raised red flags, giving further reason why Dentons should not have allowed the Centaur Bond investment in his SIPP.

Mr W has also referred to what he describes as poor service provided by Dentons since his SIPP was opened. He says Dentons charged high fees and provided a poor service, providing inadequate or no responses to queries raised and instructions given.

What happened

There were a number of parties involved with Mr W's SIPP. I have set out a summary of each.

The investment platform provider - "A"

A is a UK based, Financial Conduct Authority ("FCA") authorised investment platform provider. It provided an investment platform in which part of the money in Mr W's SIPP was held.

Dentons

Dentons is a SIPP provider and administrator. At the time of the events in this complaint, Dentons was regulated by the FCA. Dentons was authorised, in relation to SIPPs, to arrange (bring about) deals in investments, to deal in investments as principal, to establish, operate or wind up a pension scheme, and to make arrangements with a view to transactions in investments. It provided Mr W's SIPP.

The IFA - MedDen Financial Services LLP

MedDen Financial Services LLP (MedDen) was an IFA which, at the time of the relevant events, was authorised by the FCA. I understand that, at the time of the relevant events, MedDen had permission to give investment advice, including pension transfers. MedDen was Mr W's IFA and recommended the SIPP (and the investments subsequently made) to him.

MedDen is in liquidation and was declared to be "failed" by the Financial Services Compensation Scheme ("FSCS") as of 27 May 2021. Mr W made a claim to the FSCS in relation to the advice he was given by MedDen. The FSCS decided Mr W's claim was valid,

and paid him the maximum amount of compensation available under its rules - £85,000. It assessed Mr W's loss as being in excess of £85,000.

I note that, since my provisional decision was issued, the FCA has issued two Final Notices against two former advisors at MedDen. I have seen both the Notices.

The DFM – NGEN Capital Ltd

NGEN Capital Ltd (NGEN) is a UK based investment management business which, at the time of the relevant events, was authorised by the FCA and had permissions to manage investments. It was the initial DFM of the money held on A's platform, within the SIPP.

Centaur Asset Management and associated businesses

Centaur Asset Management (Centaur AM) is a business registered in Bermuda, which appears to have offices in other countries. In the case of Mr W's SIPP, Centaur AM was operating from an office in Dubai. Centaur AM is described as the investment advisory division of Centaur Holdings or The Centaur Group.

The bond Mr W invested in, though his SIPP, was distributed by Centaur AM and issued by Centaur Group Finance Ltd (Centaur GF). That business is described on Centaur Asset Management's website (in a post dated 27 January 2015) as follows:

"*Centaur Group Finance Ltd ("CGF") is a wholly owned subsidiary of Centaur Holdings Ltd ("Centaur"), a global investment holding company with interests and investments ranging from asset management, wealth management, private equity, venture capital, mining and natural resources and agricultural investments.*"

Centaur Holdings does not currently appear to have an operating website, but an archive from early 2016 describes it as having a head office in Dubai. It was registered in Bermuda; as was Centaur GF.

Mr W's dealings with the parties

In 2016, Mr W had two pension schemes, with a value of around £800,000. Around £40,000 was held in a personal pension scheme, with the remainder held in an occupational scheme provided by a former employer of Mr W's.

Mr W appointed MedDen as his financial advisor in 2016. It subsequently advised him to switch or transfer his pensions to Dentons' SIPP. MedDen sent an application for a SIPP to Dentons in late 2016. The application was signed by Mr W on 25 October 2016, and ancillary forms were signed in November and December 2016. These included:

- Dentons' "Statement for certification of Sophisticated and HNW investors", signed by Mr W on 16 December 2016.

- Dentons' "Transfer from schemes offering safeguarded benefits into a Dentons SIPP" form, signed by a pension transfer specialist advisor at MedDen on 28 November 2016 and signed by Mr W on 25 October 2016.

- Dentons' "SIPP Non Standard Investment Declaration", signed by Mr W on 16 December 2016.

The certification form included a declaration from Mr W that he was a high net worth individual, for the purposes of the Financial Services and Markets Act 2000 (Promotion of

Collective Investment Schemes) (Exemptions) Order 2001. It also included confirmation from Mr W that he understood the investments he was proposing to make were higher risk and may not be easily sold.

The safeguarded benefits form included confirmation from MedDen's pension transfer specialist that MedDen had given advice to make the transfer to the SIPP from Mr W's occupational scheme, had conducted a Transfer Value Analysis, and it held the relevant FCA permissions to provide this advice. It also included confirmation from Mr W that he had received advice and wished to proceed.

The Non Standard Investment form was completed specifically in relation to the Centaur Bond (albeit with a proposed investment amount of £250,000) and listed 14 questions to which Mr W was required to give a yes or no answer. Mr W answered "yes" to all. The questions included whether Mr W understood he may not get the money invested back, was in a position to accept this risk, was comfortable with it, had read all the relevant documentation, and understood there may be no regulatory protections. The form also included a declaration from Mr W that he had received advice from MedDen in connection with the investment.

Dentons sent an investment application to Centaur AM in Dubai on 16 January 2017. The application was for Mr W's SIPP to invest £300,000 in the Centaur Bond. The following was set out at the beginning of the application form:

"*Subject to the terms and conditions set forth herein, Centaur Group Finance Ltd acting in respect of its segregated Account #5, "Centaur Fixed Income Bond" (the "Issuer") proposes to issue and sell bonds (the "Bonds") to the undersigned subscriber (the "Subscriber") and the Subscriber, intending to be legally bound, hereby subscribes pursuant to this Subscription Agreement to purchase the Bonds from the issuer, on a private placement basis on the date upon which the issuer issues its Bonds.*"

The application also included a "Suitability Declaration", which included the following:

"*…completion by them of this subscriber suitability declaration (this "declaration") is required by the Bermuda Stock Exchange (the "BSX") in order to purchase the Bonds. For the purposes of this Form of Suitability Declaration, the Bonds are subject to the "restricted marketing" provisions of the BSX's listing regulations.*

In making an investment decision, Subscribers must rely on their own examination of the issuer and the terms of the offering, including the merits and risks involved. These securities have not been recommended by the BSX nor has the BSX confirmed the accuracy or determined the adequacy of the Offering Memorandum or Supplement.

…

If approved for listing on the BSX, the securities may not be transferred or otherwise disposed of except in accordance with the "restricted marketing" provisions of the BSX's listing regulations. The Subscriber recognises and hereby acknowledges that the transferability of the securities is extremely limited, that he/she/it may not be able to liquidate his/her/its investment and he/she/it has no need to be liquidate his/her/its investment and that he/she/it can afford the loss of his/her/its entire investment.

Subscribers should be aware that they will be required to bear the risks of this investment for an indefinite period of time."

Dentons received £39,289.59 from Mr W's personal pension provider on 23 January 2017

and £772,080.67 from his occupational scheme provider on 3 March 2017. £300,000 of this was subsequently transferred to Centaur GF, and was invested in the Centaur Bond on 6 March 2017. A letter from Centaur AM to Dentons dated 8 March 2017 included the following:

"*We are pleased to confirm that Series 5 of the Centaur Fixed Income Bond closed on 6 March 2017 and such bonds were subsequently listed by the Bermuda Stock Exchange on 6 March 2017.*

We hereby confirm that your bond subscription funds in the amount of British Pounds Three hundred thousand (GBP 300,000) have been allocated to Series 5 of the Centaur Fixed Income Bond for a term of five (5) years at six decimal twenty five percent (6.25%) interest per annum…"

The majority of the money not invested into the Centaur Bond was sent to A in April 2017, to be managed by the DFM, NGEN. Investments in Delta Global Securities Ltd (Delta) were made on A's platform. Delta appears to have been another bond issued by Centaur GF and distributed by Centaur AM, which was listed in Bermuda on 2 October 2017. A total of £97,434 was invested Delta, broken down into three amounts, between June and August 2017.

In April 2018 the investment portfolio held with A was transferred to another platform, with the exception of the Delta investment, which could not be transferred as the new platform provider would not accept it.

After Mr W raised concerns with A, it agreed to return to him, at its own cost, the sums which had been invested in the Delta Bond, plus interest. In an email Mr W has shared with us an ex-advisor of MedDen also told Mr W that A has compensated all those who bought the Delta Bond on its platform (I assume on the same basis Mr W was effectively compensated). As a result of this, Mr W's complaint against Dentons is focussed on the stand-alone £300,000 investment made in the Centaur Bond.

In July 2018 Mr W gave instructions to Dentons to redeem (i.e. sell) the Centaur Bond. This was not successful and, although Mr W's efforts continued through August and September 2018, he was not ultimately able to sell the bond.

Mr W switched his SIPP to a new provider in late 2019. However, as the Centaur Bond could not be transferred to the new provider Mr W's Dentons SIPP remained open, holding only the Centaur Bond, and it remains in his SIPP.

The Centaur Bond

The Bermuda Stock Exchange website says the following, in relation to the listing:

"*Centaur Group Finance Ltd Segregated Account #5 – Centaur Fixed Income Bond (the "Issuer")* ***Programme intends to issue a total principal amount $25,000,000 of bonds*** *(the "Bonds") acting in respect of and through the Issuer. The Bonds will be issued in one or more series and one or more issues. It is intended that each tranche will have different coupons and maturity dates.*

The Issuer intends to use the proceeds of the Bonds for the purposes of debt financing business projects of its Affiliates in relation to the development of various mining projects which include (but shall not be limited to) mining the commodities coal, copper, gold, silver, ferrochrome, platinum, diamond and bauxite predominantly located in (but not limited to) the United Kingdom, South Africa, Zimbabwe and Namibia and/or the acquisition of capital equipment to expand current mining operations and/or to finance current sand, gravel and

asphalt production for existing projects and/or general corporate expenses, ancillary fees, costs and expenses related to such projects"

I understand the Suitability Declaration I refer to above means the Centaur Bond was to be a "Mezzanine" listing in which, according to BSX's Listing Guide for Mezzanine Securities, it permitted listing "*without having to meet the conventional proven minimum track record, free float or profitability requirements of a full IPO*", "*providing them with a unique opportunity to list and subsequently raise public capital on an internationally recognized exchange at a much earlier stage than a traditional IPO*". The "*restricted marketing*" was a condition of this listing.

On 1 November 2019 the Bermuda Stock Exchange made the following announcement:

"..*following a request from the Issuer, the Bermuda Stock Exchange has suspended trading in Centaur Fixed Income Bond Bonds (the "Bonds") pending clarification on the fair value of the Bonds*"

An update given later in November 2019 explained that some "affiliates" (i.e. businesses to which the issuer had apparently lent money) had encountered liquidity problems, which brought into question the bonds' ability to continue to make interest payments, and the suspension was put in place so clarity on the position could be sought. Subsequent updates said "*The Issuer has commenced legal proceedings against the applicable Affiliate and will provide further details of such as and when available in subsequent monthly updates as matters progress*.". These updates have been given in identical terms from 2021 to date, with no indication any progress has been made.

Dentons' due diligence on the Centaur Bond

Our investigator asked Dentons some questions about the due diligence it had undertaken into the Centaur Bond before accepting it in Mr W's SIPP. The questions, and answers given by Dentons (in bold), were as follows:

"*Did you carry out due diligence into the underlying fund held in the SIPP? If so, what were your conclusions in respect of the investment? Please provide evidence of the due diligence you carried out on the investment.*

We established on receipt of the first SIPP introduced to us that the proposed investment, following on from regulated advice, was a Standard investment - a fixed interest bond which was traded on a Regulated exchange and available to purchase via mainstream regulated platforms such as [A].

Please provide a copy of the investment product literature.

To follow. (Dentons later told us it had been "*unable to locate the paperwork / product literature*")

Please provide copies of any correspondence exchanged relating to the due diligence conducted on the investment.

Non applicable. See previous comments.

Did you conduct your own independent review of the investment, or did you rely on any reports by a third party? Please provide a copy of the review and any other third-party documentation/reports that you relied on.

No, we relied on the fact the adviser was regulated by the FCA and held the appropriate permissions, the investment was traded on a regulated exchange and available to purchase via regulated platforms.

How did you satisfy yourself that the valuation was fair and reasonable? Please provide supporting evidence. For example, if you relied on any accountancy reports please provide copies of these reports.

It was a standard investment and traded daily via a regulated exchange and regulated platforms."

In an email to MedDen dated 27 July 2018 Dentons said:

"*Dentons have now declined to allow clients to invest new funds into the Centaur Bond Fund but existing clients are allowed to maintain their existing holdings.*

I mentioned to you that the shape of the SIPP market is changing following a number of high profile court cases and challenges from the FCA around SIPP firms due diligence processes, hence why Dentons are reviewing many of the investments we previously allowed which were non UK based for example.

The reason for decline are this is not a UCIS – it is doubly risky in our view, because it is both unregulated and not a collective, but issued by one company, Centaur Management Limited.

Furthermore there seems no verification that this company is authorised by the Bermuda Monetary Authority.

Finally the impact scores, if taken at face value would only allow a maximum of 30% of the value of a SIPP into the investment had the above two factors not been taken into account"

It seems this followed Dentons appointing a third party to carry out some due diligence into the investment. I have not seen the full report made to Dentons by the third party, but assume it includes the "impact score" mentioned above.

In an internal email dated 15 November 2018 a member of staff at Dentons noted the following:

"*I have spoken to* [Dentons' staff member] *this morning who had by coincidence attended a meeting that* [A] *also attended.*

In general conversations it seems [A] *are very concerned with the structure and validity of the Centaur/Delta Bond investment.*"

In an internal email dated 27 July 2019 the person at Dentons dealing with Mr W's initial complaint asked another member of Denton's staff "*perhaps you might be able to provide some detail of what 'Due Diligence' research might have been taken* [at the time of Mr W's application to invest in the bond]*?*". There then followed an exchange in which it was said Dentons could not locate any records of due diligence undertaken before Mr W's investment was made; but it nonetheless thought the investment was "*clearly approved*" by it at the time as there was contemporaneous hand-written note on the file to that effect.

Dentons' due diligence on MedDen

Our investigator asked Dentons some questions about the due diligence it had undertaken

into MedDen before accepting it in Mr W's SIPP. The questions, and answers given by Dentons (in bold), were as follows:

"*When did the introducer first propose to become an introducer of SIPP business?*

There was no proposal to become an introducer of SIPP business. From 2014 to 2018 we received SIPP applications for 11 clients who were advised by Med Den Independent Financial Advisers. MedDen were an FCA Regulated Financial Adviser company and they were providing regulated advice to each of their clients to transfer pension savings in to our SIPP and to invest in Standard Investments.

Did you have an agreement in place with the introducer? If so, what was the start and end date of your agreement with the introducer? Please provide a copy of the agreement.

No. We do not have any agreements in place with any introducers. We do not take business from unregulated introducers and never have done. As a bespoke SIPP provider we tend do not receive volume introductions.

What background checks/due diligence did you do on the introducer before accepting their business? Please provide copies of any checks/due diligence that you conducted.

We only accept business from FCA Regulated introducers. We will always check the FCA register to ensure the company has the appropriate permissions and there are no red flags.

What did you understand introducer's business model/client process to involve? In particular, how the introductions were made by the introducer to clients, was any advice being given by the introducer on the pension transfer and/or the underlying investments and how many introductions were you expecting per month. Please provide copies of any initial discussions/notes made that you had with the introducer about this before accepting introductions.

Save for point 3 above, the introducer's business model is not our concern and we do not have a relationship or agreement with any introducer. We do not pay introducer fees or commissions nor do we have any reciprocal arrangements. We accept business either from Direct clients or where there is an introducer, the introducer must be regulated. In the case of Mr W, MedDen Independent Financial Advisers, at that time were an FCA Regulated financial adviser company. They advised Mr W to establish a SIPP, to transfer his pension savings across from Mercer and Old Mutual, and to then invest in a Standard Investment – a Bond which was traded on a Regulated exchange and could be accessed via mainstream trading platforms such as [A]***.***

After the initial agreement did you have any further discussions with the introducer about the client process/the business they were referring? If so, please provide copies of these discussions.

There was no initial agreement. Upon receipt of the instructions from the client and the regulated introducer we processed the SIPP establishment, transfer payments and facilitated the investment(s) as per their instructions. The member is a co-trustee of the scheme and is therefore privy to these actions, signs all instructions and authorises the movement of all funds out of the scheme.

After the initial agreement did you conduct any ongoing checks on the introducer? If so,

please provide copies of the checks.

No, the adviser was authorised by the FCA and held the appropriate permissions at that time to conduct the business activity for the client which we were instructed to carry out by both the member and adviser. Following the aforementioned advice all SIPP investments are monitored on an ongoing basis.

Did you record commission/fees paid by both you and any underlying fund providers to the introducer? If so, please can you provide the details for this for the SIPP and the relevant underlying investment(s)?

We do not and have never paid any fees or commissions to any introducers.

If your understanding was that advice would be given by the introducer, did you request copies of any suitability reports/pension transfer reports provided to the clients? If so, please provide copies of what you requested and received.

No, we did not request copies of suitability reports. The adviser held the appropriate permissions granted by the FCA to provide the advice and was registered on the FCA's register available to the public and we therefore believed we had the right to rely upon the reliability of said register which purported this firm had met the required standards / expectations. The advice is between the adviser company and the underlying client and often will include holistic financial planning containing information which under GDPR we have no right to hold or view. Nevertheless, we did obtain written confirmation that the adviser had the required permissions to advise on a defined benefit transfer. Mr W signed documentation confirming that he had received appropriate advice as well as an acknowledgement that he would be giving up his entitlement to safeguarded benefits on transfer.

Has any agreement you had in effect with the introducer now ended? If so, why was the agreement ended? Please provide supporting evidence of the reasons and any discussions with the introducer about ending the agreement.

There was no agreement.

How many clients were introduced by the introducer?

11 in total from October 2014 to June 2018, 9 of whom were advised to invested part of their pension pot in the Centaur Fixed Interest Bond.

From the total number of clients introduced to you by the introducer, what number was the SIPP application for the consumer in this complaint?

Mr W's SIPP was the 10th out of 11 SIPPs established which were introduced to us by MedDen.

From the total number of clients introduced to you by the introducer, what % of the applications involved transfers in from defined benefit occupational pension schemes?

2 out of the 11 clients transferred in pension savings from defined benefit schemes, so circa 18%.

From the total number of clients introduced to you by the introducer, what % of the applications were to be invested in non-mainstream investments?

0% - all investments were mainstream and did not solely consist of the aforementioned Centaur Bond. MedDen advised some of their clients to invest in the Centaur Fixed Interest Bond which traded on a Regulated (Bermudan) exchange. It was a standard investment. A number of MedDen clients also established* [A] *Wrap platforms to invest a proportion of their SIPP funds in this same Bond.

What % of your total new business did the introducer's introductions constitute during the course of your agreement with it? Alternatively, if there was no agreement in effect, then what % of your total new business did the introducer's introductions constitute between the dates of the first and last introduction you received from the introducer?

***There was no agreement. Between October 2014 when MedDen introduced their first client to us, and June 2018 when they introduced the last of the 11 clients to us, we wrote in excess of 1000 SIPPs, 11 of which were introduced to us by MedDen. This equates to circa 1%.*"**

Dentons' response to Mr W's complaint

Dentons did not uphold Mr W's complaint It said, in summary:

- Dentons does not give investment advice – Mr W was advised by MedDen, and it is responsible for the suitability of the advice.

- In accordance with the FCA rules Mr W was required to obtain professional advice from a qualified Pension Transfer Specialist and did receive such advice from his adviser at MedDen.

- Mr W's SIPP was self-invested.

- Mr W signed a 'Statement for Certification of Sophisticated and High Net Worth Investors' and, when doing so, acknowledged, though answering various questions, that he understood the Centaur Bond investment and its associated risks.

- Med Den's advisor also confirmed to Dentons that Mr W understood the risks associated with the Centaur Bond investment.

- Mr W completed a 'SIPP Non-Standard Investment Declaration Form', answering "yes" to all the questions listed, and giving further confirmation of his understanding of the risks as a result.

- The principal responsibilities for Dentons were to ensure:

    - That the proposed investment meets the requirement set out by Her Majesty's Revenue and Customs (HMRC) for inclusion in a SIPP.
    - To ensure that the proposed investment was legitimate and regulated by an appropriate authority.

- Dentons were satisfied the Centaur Bond met HMRC requirements.

- Dentons verified that, at the time of investment, the Centaur Bond was registered on the Bermudan Stock Exchange – a recognised investment exchange.

Our investigator's view

Our investigator concluded Mr W's complaint should be upheld as, in her view, Dentons should not have accepted the investment in the Centaur Bond. She said, in summary:

- Mr W wasn't the first client to transfer their pension and invest in the Centaur Bond following MedDen's advice. By at least client number 5 or 6 that had been introduced by MedDen to invest in the Centaur Bond, Dentons ought to have been questioning the quality of the introductions it received from MedDen.

- It would have been reasonable for Dentons to have asked consumers who were making investments into the Centaur Bond whether they had received suitability reports from MedDen and, if they had, to have requested copies of the reports. This is one of the examples of good practice laid out in the FSA 2009 Thematic Review Report.

- Mr W says he did not receive any suitability reports from MedDen, therefore if Dentons had asked Mr W it would have been aware that MedDen were likely not assessing the suitability of the investment, and this should have been a considerable red flag.

- The Centaur Bond was not the usual type of investment that is made by retail consumers, and was high risk and speculative. Checking the investment was allowable in a SIPP is a good starting point, however the requirements on a SIPP provider's due diligence go further than this, especially taking into consideration the nature of the bond. SIPP providers need to also consider whether an investment should be held in a SIPP.

- There is no evidence Dentons considered what consumers were being told about the investment, and whether the investment functioned in the way it claimed to.

- Internal emails from Dentons show that the investment was being discussed, and it was explained that in July 2018 the investment had been sent for review and it was declined.

- It is not clear how Dentons came to this conclusion in 2018, but did not identify any issues before Mr W made in the investment in 2017. Mr W wasn't the first person to invest into the Centaur Bond, so this review ought to have taken place before Mr W made the investment.

- The conclusion reached in 2018 (not to accept the investment) wasn't based on information that was available only from 2018. So, it seems reasonable to say that as this investment was declined in 2018, it ought to have been declined from the start, and certainly prior to Mr W's investment in 2017, for the same reasons.

- There isn't any confirmation on where consumers' funds were being sent. The fact that loans were being provided to unknown companies suggests that Dentons didn't know how clients' funds would be kept safe.

Dentons' response to the view

Dentons did not accept the investigator's view. It said, in summary:

- The investigator had failed to take account of the actual factual position that Mr W was advised by a regulated financial adviser and the investment which Mr W decided on was regulated by being held on a regulated exchange.

- The proposed purchase of the Centaur Bond was referred to by MedDen as a “deal” that Mr W had made, and MedDen had told Dentons that time was of the essence in establishing the new SIPP because if the SIPP was not established by 20 January 2017, Mr W would incur “heavy legal fees”.

- It is implausible that Mr W was not told why the Centaur Bond was suitable for his risk appetite as he had entered a “deal” with Centaur AM to secure the bond prior to the establishment of his SIPP. The sum of £300,000 is a substantial sum and it is unbelievable that a sophisticated high net worth investor such as Mr W would not have investigated the full terms and nature of the investment of his “deal”.

- The evidence shows MedDen confirmed to Dentons it had discussed and advised Mr W regarding the transfer of benefits from his occupational pension. The advice provided by MedDen included pointing out the loss of safeguarded benefits to Mr W and it confirmed Mr W was comfortable with all the risks involved.

- Dentons had taken all necessary steps to ensure that Mr W was being advised fully and comprehensively on his personal choices of pension and investments which included the Centaur Bond as well as the other investments that he would hold on A’s platform.

- Dentons accepted the examples of good practice as outlined by the FCA’s 2013 Finalised Guidance and actively ensured that these were actioned.

- Mr W is an accountant and listed as a company director. This indicates Mr W is a professional person with significant control of a long-established business. It is completely incongruous to state that an individual with his background would be led blindly to dispose of £300,000 to an unknown asset management firm offering a Fixed Income 5-year bond yielding 6.25%. Rather, it seems the yield promised by the Centaur Bond acted as an inducement to Mr W, a sophisticated investor, to strike a “deal” to invest in it.

- Added to this is the documentation that Mr W confirmed and signed certifying that he is a sophisticated and High Net Worth individual and he understood the meaning of illiquid assets in the context of his investment acquisition. It therefore disputes the investigator’s assertion that Mr W would most likely not have invested in the Centaur Bond if Dentons had acted appropriately and put a stop to the transaction.

- Dentons had met the standards of good practice set out in the FCA’s 2013 Finalised Guidance (Dentons provided a number of examples of this).

- An example of good practice set out in the 2009 Thematic Review report was “being able to identify anomalous investments”. Dentons did act diligently as soon as it became apparent that the Centaur Fixed Income Bond was unsuitable and immediately withdrew it as a suitable investment and Dentons also actively collaborated and supported Mr W with his attempts to liquidate his position.

- There is no suggestion in the 2009 Thematic Review Report that Dentons should have gone behind the Centaur Bond before Mr W had decided to make a “deal” to invest in it.

- The investigator said that by client number 5 or 6, Dentons should have been questioning the quality of the introductions that it was receiving from MedDen. It

disagrees wholeheartedly with this statement. Why would a sophisticated investor not choose a Fixed Income Bond listed on the Bermuda Stock Exchange?

- Bermuda is at the heart of Lloyds of London insurance market as the reinsurance centre of the world with principal access to the US markets and direct access to the London global markets.; it has the fourth highest per capita income in the world primarily fuelled by offshore financial services for non-resident firms.

- The bond was issued by Centaur Asset Management Limited who had representative offices around the globe, and they had listed on the Bermuda Stock Exchange in July 2016.

- The number of customers who chose the Centaur Fixed Income Bond in 2016 represents a mere 2.5% of Dentons new SIPP business in 2016 and 0.16% of Dentons overall SIPP business in 2016.

- None of these facts would indicate a reason to put a stop to Mr W's intent.

- Also of significance is that all 9 customers who invested in the Centaur bond received financial advice from an FCA regulated adviser firm and all had other investments within their portfolios of sums greater than their investment in the Centaur bond, so they had considered it important to diversify their portfolio as a safety mechanism which is a relevant consideration for Dentons as a SIPP operator.

- It does not agree the Centaur Bond was not the usual type of investment that is made by retail customers, as the investigator suggested.

- The investigator has failed to address The Financial Services and Markets Act (FSMA) and its direct relationship to the objectives of the FCA. Under FSMA, the general principle that consumers should take full responsibility for their decisions as per section 3B (d) serves to act as a proportionality measure to the FCA's consumer protection objective.

- Dentons acted in a way which was consistent with its regulatory obligations at all times. As the SIPP operator it was not required to provide advice and was expressly disallowed from doing so. It was reasonable for Dentons to rely on advice provided by an FCA regulated and authorised firm to Mr W.

- It does not fall to the Ombudsman to decide that the actions of the SIPP operator are unfair if they are not expressly permitted to give advice to retail customers but to direct customers to engage the services of professional qualified financial advisers and legal representatives.

- The courts drew the conclusion in Adams v Options case that the role of the SIPP operator was limited to that of an administrator. MedDen was a regulated and authorised Independent Financial Adviser with appropriate professional accreditation. It is unfair of the Ombudsman to impose a duty upon the SIPP operator in contravention of the current law of the courts.

- The investigator has referred to a decision issued by an ombudsman against another SIPP operator, but there are significant factual differences between that case and Mr W's – the volumes of business are very different.

My provisional decision

I recently issued a provisional decision. My provisional conclusion was the complaint should be upheld. My key provisional findings, in summary, were that Dentons did not carry out sufficient due diligence on the Centaur Bond and, if it had done so, it should have concluded it should not allow the investment in Mr W's SIPP. I also said Dentons should have identified the introduction from MedDen as one carrying a risk of consumer detriment. I concluded that, in the circumstances, it was fair to ask Dentons to compensate Mr W for his loss.

Responses to my provisional decision

Dentons did not accept my decision. It said, in summary:

- It has become aware of the FCA Final Notices recently issued against two former advisors at MedDen.

- The Final Notices highlight that the FCA visited MedDen in November 2018, and was concerned that there were significant issues with MedDen's advice process, resulting in unsuitable advice being provided by MedDen to its customers regarding investments into the Centaur Bond.

- If the FCA believes that MedDen was providing unsuitable advice then it would be inconsistent for me to find that Dentons is wholly liable for Mr W's losses. MedDen should be held liable.

- The Notices say redress was owed by MedDen due to the poor advice given by it, not the failings of any other parties, including SIPP operators. It would be inconsistent with the Notices for me to find Dentons wholly liable for Mr W's losses in light of these FCA decisions.

- It believes my final decision should be revised to reflect the fact that the FCA was in the process of investigating MedDen for the advice which resulted in Mr W's loss.

Mr W accepted my provisional decision. He submitted some further comments, which essentially set out his agreement with my provisional findings. His main points, in summary, were as follows:

- The issue has caused him a lot of anxiety and worry. The promises made to him did not materialise and a lot of his plans have had to be put on hold as a result of the uncertainty created by the failure of the Centaur Bond investment.

- He is a low to medium risk investor with limited investment knowledge. He is not a sophisticated investor.

- He relied on the professionals involved and assumed appropriate checks and balances were in place.

- The risks associated with the Centaur Bond were not properly explained to him. MedDen assured him the investment was a routine one, and made light of the paperwork involved.

- Dentons should not have wholly relied on MedDen. It ought to have instead questioned the investment.

- It was correct (referring to what I had said in my provisional decision about fair compensation) to assume he would be a higher rate taxpayer in retirement.

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.

Having carefully reconsidered everything, I remain of the view set out in my provisional decision. My final decision therefore reflects my provisional one. Dentons' response is focussed on the question of whether it is fair to require it to pay compensation, rather than the findings I set out in my provisional decision otherwise. And, although Mr W made further comments, following my provisional decision, those comments essentially set out his agreement with my provisional decision. So, save for where I come to consider fair compensation, I have largely repeated below the findings set out in my provisional decision.

As a preliminary point, the purpose of this decision is to set out my findings on what is fair and reasonable, and explain my reasons for reaching those findings, not to offer a point-by-point response to every submission made by the parties to the complaint. And so, whilst I've carefully considered all the submissions made by both parties, I've focussed here on the points I believe to be key to my determination of what's fair and reasonable in the circumstances.

In a similar vein, I confirm have read – and carefully considered – everything the parties have said and submitted. But the summary I have set out above is not intended to be exhaustive; rather, it is intended to be a summary of what I consider to be key.

I'm required to determine this complaint by reference to what I consider to be fair and reasonable in all the circumstances of the case. When considering what is fair and reasonable, I am required to take 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 relevant time.

With that in mind I'll start by setting out what I have identified as the key relevant considerations to deciding what is fair and reasonable in this case.

Relevant considerations

The Principles

In my view, the FCA's Principles for Businesses are of particular relevance to my decision. The Principles for Businesses, 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). I consider that the Principles relevant to this complaint include Principles 2, 3 and 6 which say:

"*Principle 2 – Skill, care and diligence – A firm must conduct its business with due skill, care and diligence.*

Principle 3 – Management and control – A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.

Principle 6 – Customers' interests – A firm must pay due regard to the interests of its customers and treat them fairly."

I have carefully considered the relevant law and what this says about the application of the FCA's Principles. In *R (British Bankers Association) v Financial Services Authority* [2011]

EWHC 999 (Admin) ("BBA") Ouseley J said at paragraph 162:

"*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 requirement 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*."

And at paragraph 77 of BBA Ouseley 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 of the essence of what is fair and reasonable, subject to the argument about their relationship to specific rules*."

In *R (Berkeley Burke SIPP Administration Ltd) v Financial Ombudsman Service* [2018] EWHC 2878) ("BBSAL"), Berkeley Burke brought a judicial review claim challenging the decision of an Ombudsman who had upheld a consumer's complaint against it. The Ombudsman considered the FCA Principles and good industry practice at the relevant time. He concluded that it was fair and reasonable for Berkeley Burke to have undertaken due diligence in respect of the investment before allowing it into the SIPP wrapper, and that if it had done so, it would have refused to accept the investment. The Ombudsman found Berkeley Burke had therefore not complied with its regulatory obligations and had not treated its client fairly.

Jacobs J, having set out some paragraphs of BBA including paragraph 162 set out above, said (at paragraph 104 of BBSAL):

"*These passages explain the overarching nature of the Principles. As the FCA correctly submitted in their written argument, the role of the Principles is not merely to cater for new or unforeseen circumstances. The judgment in BBA shows that they are, and indeed were always intended to be, of general application. The aim of the Principles based regulation described by Ouseley J. was precisely not to attempt to formulate a code covering all possible circumstances, but instead to impose general duties such as those set out in Principles 2 and 6*."

The BBSAL judgment also considers section 228 FSMA and the approach an Ombudsman is to take when deciding a complaint. The judgment of Jacobs J in BBSAL upheld the lawfulness of the approach taken by the Ombudsman in that complaint, which I have described above, and included the Principles and good industry practice at the relevant time as relevant considerations that were required to be taken into account.

As outlined above, Ouseley J in the BBA case held that it would be a breach of statutory duty if I were to reach a view on a complaint without taking the Principles into account in deciding what is fair and reasonable in all the circumstances of a case. And, Jacobs J adopted a similar approach to the application of the Principles in BBSAL. I'm therefore satisfied that the Principles are a relevant consideration and I will consider them in the specific circumstances of this complaint.

The *Adams* court cases and COBS 2.1.1R

On 18 May 2020, the High Court handed down its judgment in the case of *Adams v Options SIPP* [2020] EWHC 1229 (Ch). Mr Adams subsequently appealed the decision of the High Court and, on 1 April 2021, the Court of Appeal handed down its judgment in *Adams v Options UK Personal Pensions LLP* [2021] EWCA Civ 474. I've taken account of both these judgments and the judgment in *Adams v Options UK Personal Pensions LLP* [2021] EWCA Civ 1188 when making this decision on Mr W's case. I note the Supreme Court refused Options permission to appeal the Court of Appeal judgment.

I've considered whether *Adams* means that the Principles should not be taken into account in deciding this case. I note that the Principles for Businesses didn't form part of Mr Adams' pleadings in his initial case against Options SIPP. And, HHJ Dight didn't consider the application of the Principles to SIPP operators in his judgment. The Court of Appeal also gave no consideration to the application of the Principles to SIPP operators. So, neither of the judgments say anything about how the Principles apply to an Ombudsman's consideration of a complaint. But, to be clear, I don't say this means *Adams* isn't a relevant consideration at all. As noted above, I've taken account of the *Adams* judgments when making this decision on Mr W's case.

I acknowledge that COBS 2.1.1R (A firm must act honestly, fairly and professionally in accordance with the best interests of its client) overlaps with certain of the Principles and that this rule was considered by HHJ Dight in the High Court case. Mr Adams pleaded that Options SIPP owed him a duty to comply with COBS 2.1.1R, a breach of which, he argued, was actionable pursuant to section 138(D) of FSMA ("the COBS claim"). HHJ Dight rejected this claim and found that Options SIPP had complied with the best interests rule on the facts of Mr Adams' case.

Although the Court of Appeal ultimately overturned HHJ Dight's judgment, it rejected that part of Mr Adams appeal that related to HHJ Dight's dismissal of the COBS claim on the basis that Mr Adams was seeking to advance a case that was radically different to that found in his initial pleadings. The Court found that this part of Mr Adams' appeal did not so much represent a challenge to the grounds on which HHJ Dight had dismissed the COBS claim, but rather was an attempt to put forward an entirely new case.

I note that HHJ Dight found that the factual context of a case would inform the extent of the duty imposed by COBS 2.1.1R. HHJ Dight said at para 148:

"*In my judgment in order to identify the extent of the duty imposed by Rule 2.1.1 one has to identify the relevant factual context, because it is apparent from the submissions of each of the parties that the context has an impact on the ascertainment of the extent of the duty. The key fact, perhaps composite fact, in the context is the agreement into which the parties entered, which defined their roles and functions in the transaction*."

I therefore need to construe the duties Dentons owed to Mr W under COBS 2.1.1R in light of the specific facts of Mr W's case. So, I've considered COBS 2.1.1R – alongside the remainder of the relevant considerations, and within the factual context of Mr W's case, including Dentons' role in the transactions.

However, I think it's important to emphasise that I must determine this complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case. And, in doing that, I'm required to take into account relevant considerations which include 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 relevant time. This is a clear and relevant point of difference between this complaint and the judgments in *Adams v Options SIPP*. That was a legal claim which was defined by the formal pleadings in Mr Adams' statement of case.

I also want to emphasise that I don't say that Dentons was under any obligation to assess Mr W's personal financial circumstances or to advise Mr W on the SIPP and/or the underlying investments. Refusing to accept an application, having given the introducer and the application proper scrutiny and identifying concerning issues, isn't the same thing as advising Mr W on the merits of the SIPP and/or the underlying investments.

Overall, I'm satisfied that COBS 2.1.1R is a relevant consideration – but that it needs to be considered alongside the remainder of the relevant considerations, and within the factual context of Mr W's case.

Court of Appeal case

I have also considered the Court of Appeal's judgment in Options UK Personal Pensions LLP v Financial Ombudsman Service Limited [2024] EWCA Civ 541, which refers to the case law I mention above and approved the decision of the ombudsman in the case in question.

Regulatory publications

The FCA (and its predecessor, the FSA) has issued a number of publications which remind SIPP operators of their obligations and set out how they might achieve the outcomes envisaged by the Principles, namely:

- The 2009 and 2012 thematic review reports.
- The October 2013 finalised SIPP operator guidance.
- The July 2014 "Dear CEO" letter.

I've considered the relevance of these publications, all of which were published before Dentons' acceptance of Mr W's SIPP application and application to invest in the Centaur Bond. And I've set out material parts of the publications here.

The 2009 Thematic Review Report

The 2009 report included the following statement:

"*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. COBS 3.2.3(2) states that a member of a pension scheme is a 'client' for COBS purposes, and 'Customer' in terms of Principle 6 includes clients.*

It is the responsibility of SIPP operators to continuously analyse the individual risks to themselves and their clients, with reference to the six TCF consumer outcomes …

We agree that firms acting purely as SIPP operators are not responsible for the SIPP advice given by third parties such as IFAs. However, we are also clear that SIPP operators cannot absolve themselves of any responsibility, and we would expect them to have procedures and controls, and to be gathering and analysing management information, enabling them to identify possible instances of financial crime and consumer detriment such as unsuitable SIPPs. Such instances could then be addressed in an appropriate way, for example by contacting the member to confirm the position, or by contacting the firm giving advice and asking for clarification. Moreover, while they are not responsible for the advice, there is a reputational risk to SIPP operators that facilitate SIPPs that are unsuitable or detrimental to

clients.

Of particular concern were firms whose systems and controls were weak and inadequate to the extent that they had not identified obvious potential instances of poor advice and/or potential financial crime. Depending on the facts and circumstances of individual cases, we may take enforcement action against SIPP operators who do not safeguard their customers' interests in this respect, with reference to Principle 3 of the Principles for Businesses ('a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems').

The following are examples of measures that SIPP operators could consider, taken from examples of good practice that we observed and suggestions we have made to firms:

- *Confirming, both initially and on an ongoing basis, that intermediaries that advise clients are authorised and regulated by the FSA, that they have the appropriate permissions to give the advice they are providing to the firm's clients, and that they do not appear on the FSA website listing warning notices.*

- *Having Terms of Business agreements governing relationships, and clarifying respective responsibilities, with intermediaries introducing SIPP business.*

- *Routinely recording and reviewing the type (i.e. the nature of the SIPP investment) and size of investments recommended by intermediaries that give advice and introduce clients to the firm, so that potentially unsuitable SIPPs can be identified.*

- *Being able to identify anomalous investments, e.g. unusually small or large transactions or more 'esoteric' investments such as unquoted shares, together with the intermediary that introduced the business. This would enable the firm to seek appropriate clarification, e.g. from the client or their adviser, if it is concerned about the suitability of what was recommended.*

- *Requesting copies of the suitability reports provided to clients by the intermediary giving advice. While SIPP operators are not responsible for advice, having this information would enhance the firm's understanding of its clients, making the facilitation of unsuitable SIPPs less likely.*

- *Routinely identifying instances of execution-only clients who have signed disclaimers taking responsibility for their investment decisions, and gathering and analysing data regarding the aggregate volume of such business.*

- *Identifying instances of clients waiving their cancellation rights, and the reasons for this.*"

The later publications

In the October 2013 finalised SIPP operator guidance, the FCA states:

"*This guide, originally published in September 2009, has been updated to give firms further guidance to help meet the regulatory requirements. These are not new or amended requirements, but a reminder of regulatory responsibilities that became a requirement in April 2007.*

All firms, regardless of whether they do or do not provide advice must meet Principle 6 and

treat customers fairly. COBS 3.2.3(2) is clear that a member of a pension scheme is a "client" for SIPP operators and so is a customer under Principle 6. It is a SIPP operator's responsibility to assess its business with reference to our six TCF consumer outcomes: …"

The October 2013 finalised SIPP operator guidance also set out the following:

"***Relationships between firms that advise and introduce prospective members and SIPP operators***

Examples of good practice we observed during our work with SIPP operators include the following:

- *Confirming, both initially and on an ongoing basis, that: introducers that advise clients are authorised and regulated by the FCA; that they have the appropriate permissions to give the advice they are providing; neither the firm, nor its approved persons are on the list of prohibited individuals or cancelled firms and have a clear disciplinary history; and that the firm does not appear on the FCA website listings for unauthorised business warnings.*

- *Having terms of business agreements that govern relationships and clarify the responsibilities of those introducers providing SIPP business to a firm.*

- *Understanding the nature of the introducers' work to establish the nature of the firm, what their business objectives are, the types of clients they deal with, the levels of business they conduct and expect to introduce, the types of investments they recommend and whether they use other SIPP operators. Being satisfied that they are appropriate to deal with.*

- *Being able to identify irregular investments, often indicated by unusually small or large transactions; or higher risk investments such as unquoted shares which may be illiquid. This would enable the firm to seek appropriate clarification, for example from the prospective member or their adviser, if it has any concerns.*

- *Identifying instances when prospective members waive their cancellation rights and the reasons for this.*

- *Although the members' advisers are responsible for the SIPP investment advice given, as a SIPP operator the firm has a responsibility for the quality of the SIPP business it administers.*

Examples of good practice we have identified include:

- *conducting independent verification checks on members to ensure the information they are being supplied with, or that they are providing the firm with, is authentic and meets the firm's procedures and are not being used to launder money*

- *having clear terms of business agreements in place which govern relationships and clarify responsibilities for relationships with other professional bodies such as solicitors and accountants, and*

- *using non-regulated introducer checklists which demonstrate the SIPP operators have considered the additional risks involved in accepting business from nonregulated introducers*"

In relation to due diligence the October 2013 finalised SIPP operator guidance said:

"***Due diligence***

Principle 2 of the FCA's Principles for Businesses requires all firms to conduct their business with due skill, care and diligence. All firms should ensure that they conduct and retain appropriate and sufficient due diligence (for example, checking and monitoring introducers as well as assessing that investments are appropriate for personal pension schemes) to help them justify their business decisions. In doing this SIPP operators should consider:

- *ensuring that all investments permitted by the scheme are permitted by HMRC, or where a tax charge is incurred, that charge is identifiable, HMRC is informed and the tax charge paid*

- *periodically reviewing the due diligence the firm undertakes in respect of the introducers that use their scheme and, where appropriate enhancing the processes that are in place in order to identify and mitigate any risks to the members and the scheme*

- *having checks which may include, but are not limited to:*

    - *ensuring that introducers have the appropriate permissions, qualifications and skills to introduce different types of business to the firm, and*

    - *undertaking additional checks such as viewing Companies House records, identifying connected parties and visiting introducers*

- *ensuring all third-party due diligence that the firm uses or relies on has been independently produced and verified*

- *good practices we have identified in firms include having a set of benchmarks, or minimum standards, with the purpose of setting the minimum standard the firm is prepared to accept to either deal with introducers or accept investments, and*

- *ensuring these benchmarks clearly identify those instances that would lead a firm to decline the proposed business, or to undertake further investigations such as instances of potential pension liberation, investments that may breach HMRC tax relievable investments and non-standard investments that have not been approved by the firm*"

The July 2014 "Dear CEO" letter provides a further reminder that the Principles apply and an indication of the FCA's expectations about the kinds of practical steps a SIPP operator might reasonably take to achieve the outcomes envisaged by the Principles.

The "Dear CEO" letter also sets out how a SIPP operator might meet its obligations in relation to investment due diligence. It says those obligations could be met by:

- *Correctly establishing and understanding the nature of an investment*

- *Ensuring that an investment is genuine and not a scam, or linked to fraudulent activity, money-laundering or pensions liberation*

- *Ensuring that an investment is safe/secure (meaning that custody of assets is*

through a reputable arrangement, and any contractual agreements are correctly drawn-up and legally enforceable)

- *Ensuring that an investment can be independently valued, both at point of purchase and subsequently*

- *Ensuring that an investment is not impaired (for example that previous investors have received income if expected, or that any investment providers are credit worthy etc)*

Although I've referred to selected parts of the publications, to illustrate their relevance, I have considered them in their entirety.

I acknowledge that the 2009 and 2012 reports and the "Dear CEO" letter are not formal "guidance" (whereas the 2013 finalised guidance is). However, the fact that the reports and "Dear CEO" letter did not constitute formal guidance does not mean their importance should be underestimated. They provide a reminder that the Principles for Businesses apply and are an indication of the kinds of things a SIPP operator might do to ensure it is treating its customers fairly and producing the outcomes envisaged by the Principles. In that respect the publications, which set out the regulator's expectations of what SIPP operators should be doing, also go some way to indicate what I consider amounts to good industry practice and I am, therefore, satisfied it is appropriate to take them into account.

It is relevant that when deciding what amounted to good industry practice in the BBSAL case, the Ombudsman found that "*the regulator's reports, guidance and letter go a long way to clarify what should be regarded as good practice and what should not*." And the judge in BBSAL endorsed the lawfulness of the approach taken by the Ombudsman. Dentons says that I'm, "*illegitimately imposing upon Dentons UK regulatory duties to which it was not subject*." But I'm satisfied that the standards I'm holding Dentons to do apply and were applicable at the time.

At its introduction the 2009 Thematic Review Report says:

"In this report, we describe the findings of this thematic review, and make clear what we expect of SIPP operator firms in the areas we reviewed. It also provides examples of good practices we found."

And, as referenced above, the report goes on to provide "…*examples of measures that SIPP operators could consider, taken from examples of good practice that we observed and suggestions we have made to firms."*

So, I'm satisfied that the 2009 Report is a *reminder* that the Principles apply and it gives an indication of the kinds of things a SIPP operator might do to ensure it is treating its customers fairly and produce the outcomes envisaged by the Principles. The Report set out the regulator's expectations of what SIPP operators should be doing and therefore indicates what I consider amounts to good industry practice at the relevant time. So, I'm satisfied it's relevant and therefore appropriate to take it into account.

The remainder of the publications also provide a *reminder* that the Principles for Businesses apply and are an indication of the kinds of things a SIPP operator might do to ensure it is treating its customers fairly and to produce the outcomes envisaged by the Principles. In that respect, these publications also go some way to indicate what I consider amounts to good industry practice at the relevant time. I therefore remain satisfied it's appropriate to take them into account too.

The obligation to act in accordance with the Principles existed throughout the events in this

case. It is also clear from the text of the 2009 and 2012 Thematic Review Reports (and the "Dear CEO" letter in 2014) that the regulator expected SIPP operators to have incorporated the recommended good practices into the conduct of their business already. So, whilst the regulator's comments suggest some industry participants' understanding of how the good practice standards shaped what was expected of SIPP operators changed over time, it is clear the standards themselves had not changed.

I note that HHJ Dight in the *Adams* case didn't consider the 2012 Thematic Review Report, 2013 guidance and 2014 "Dear CEO" letter to be of relevance to his consideration of Mr Adams' claim. But it does not follow that those publications are irrelevant to my consideration of what is fair and reasonable in the circumstances of this complaint. I am required to take into account good industry practice at the relevant time. And, as mentioned, the publications indicate what I consider amounts to good industry practice at the relevant time.

That doesn't mean that, in considering what is fair and reasonable, I will only consider Dentons' actions with these documents in mind. The reports, Dear CEO letter and guidance gave non-exhaustive examples of good industry practice. They did not say the suggestions given were the limit of what a SIPP operator should do. As the annex to the "Dear CEO" letter notes, what should be done to meet regulatory obligations will depend on the circumstances.

To be clear, I do not say the Principles or the publications obliged Dentons to ensure the transactions were suitable for Mr W. It is accepted Dentons was not required to give advice to Mr W, and could not give advice. And I accept the publications do not alter the meaning of, or the scope of, the Principles. But, as I've said above, they're evidence of what I consider to have been good industry practice at the relevant time, which would bring about the outcomes envisaged by the Principles.

It's important to keep in mind the judge in *Adams v Options* didn't consider the regulatory publications in the context of considering what's fair and reasonable in all the circumstances bearing in mind various matters including the Principles (as part of the regulator's rules) or good industry practice.

And in determining this complaint, I need to consider whether, in accepting Mr W's application to establish a SIPP and to invest in the Centaur Bond, Dentons complied with its regulatory obligations: to act with due skill, care and diligence; to take reasonable care to organise and control its affairs responsibly and effectively; to pay due regard to the interests of its customers and treat them fairly; and to act honestly, fairly and professionally. In doing that, I'm looking to the Principles and the publications listed above to provide an indication of what Dentons should have done to comply with its regulatory obligations and duties.

What did Dentons' obligations mean in practice?

In its response to the investigator's view Dentons referred to the due diligence it carried out on the Centaur Bond (or asked a third party to carry out on its behalf) as an example of it acting in a way which is consistent with the guidance and good practice set out in the regulatory publications. It also said there is no suggestion in the 2009 Thematic Review Report that Dentons should have gone "behind" the Centaur Bond before Mr W had decided to invest in it. I have assumed this to mean Dentons does not think it was an obligation, or matter of good practice, to check the investment *before* Mr W decided to invest in it. I do not agree.

In this case, the business Dentons was conducting was its operation of SIPPs. I am satisfied that meeting its regulatory obligations when conducting this business would include deciding whether to accept or reject referrals of business and/or particular investments.

Taking account of the factual context of this case, it's my view that in order for Dentons to meet its regulatory obligations, (under the Principles and COBS 2.1.1R), amongst other things it should have undertaken sufficient due diligence into MedDen and the Centaur Bond *before* deciding to accept Mr W's application.

What I'm considering here is whether Dentons took reasonable care, acted with due diligence and treated Mr W fairly, in accordance with his best interests. And what I think is fair and reasonable in light of that. And I think the key issue in Mr W's complaint is whether it was fair and reasonable for Dentons to have accepted his SIPP application in the first place or (if so) to allow the Centaur Bond investment. So, I need to consider whether Dentons carried out appropriate due diligence checks on MedDen and the Centaur Bond *before* deciding to accept Mr W's application and *before* allowing the investment in the Centaur Bond.

And the questions I need to consider include whether Dentons ought to, acting fairly and reasonably to meet its regulatory obligations and good industry practice, have identified that consumers introduced by MedDen and/or applying to invest in the Centaur Bond were being put at significant risk of detriment. And, if so, whether Dentons should therefore not have accepted Mr W's application or his application to invest in the Centaur Bond.

Summary of my findings

Having taken account of the relevant considerations my findings remain largely as set out in my provisional decision. To confirm, in summary, they are as follows:

- In my view, considering the circumstances alongside the relevant considerations set out above, it is fair and reasonable to say Dentons did not carry out sufficient due diligence on the Centaur Bond.

- Had Dentons carried out sufficient due diligence – and drawn reasonable conclusions from it – it should, in my view, have concluded it should not allow the Centaur Bond in Mr W's SIPP; as doing so would carry a significant risk of consumer detriment.

- This finding is further supported by what Dentons knew – or ought reasonably to have known – about introductions of business from MedDen. Dentons should identified a risk of consumer detriment arising from business introduced by MedDen relating to the Centaur Bond.

- In my view, had Dentons rejected the application to invest in the Centaur Bond, MedDen would have advised Mr W to proceed (and Mr W would have been willing to proceed) as it had initially advised him to – putting all the money on A's platform, to be managed by a DFM. And there is not sufficient evidence for it to be fair and reasonable to say Dentons should have refused an application made on that basis.

- So, Mr W's application would likely have proceeded on a different basis (i.e. through investment on A's platform, managed by a DFM), had the Centaur Bond investment not been accepted.

- I have not seen sufficient evidence to show it would be fair to ask Dentons to refund any fees it charged whilst the entirety of Mr W's SIPP was with it.

- I think it is fair to ask Dentons to compensate Mr W by comparing the position he would likely be in to the position he is in, having invested in the Centaur Bond (and I reach this conclusion having again considered the role MedDen played in events).

- Dentons has caused Mr W some distress and inconvenience; it would be fair to award some compensation for this.

- Dentons should also pay Mr W an amount equivalent to the fees that will be payable to it over the next five years (I note Denton's intention, set out in its response to my provisional findings, to charge some fees to the SIPP). I am satisfied that is fair, in the circumstances of this complaint.

I will now again set out my findings in more detail.

Did Dentons act fairly and reasonably by accepting Mr W's application to invest in the Centaur Bond?

The steps taken by Dentons

In my view it is fair and reasonable to say Dentons did not carry out sufficient due diligence on the Centaur Bond.

As noted above, when asked about the due diligence it carried out on the Centaur Bond before accepting Mr W's investment in it in his SIPP, Dentons said:

"*We established ….. that the proposed investment, following on from regulated advice, was a Standard investment - a fixed interest Bond which was traded on a Regulated exchange and available to purchase via mainstream regulated platforms*"

Dentons has also said it has no documentation relating to the bond; suggesting it took no further steps before deciding to accept Mr W's application. So, the basis on which Dentons accepted the investment in the bond seems to be as follows:

- The bond was a standard investment traded on a regulated exchange.
- Mr W had received regulated advice to make the investment in the bond.
- The bond was available to purchase through regulated platforms.

In my view these are reasons why Dentons did not think it should carry out any due diligence, rather than conclusions drawn following due diligence. And it was not enough in the circumstances to rely solely on these points.

I assume Dentons' reference to a "standard investment" refers to the FCA's Capital Requirements rules. However, there is no evidence of there being any secondary market in the bond. The fact it was listed (although it was not listed at the time of the application, in any event) does not of course guarantee liquidity, and I have seen no evidence of any open market trading in the bond or of there being any secondary market through any other means. As mentioned earlier, when completing the application for the investment, Dentons also acknowledged that it:

"…recognises and hereby acknowledges that the transferability of the securities is extremely limited, that he/she/it may not be able to liquidate his/her/its investment and he/she/it has no need to be liquidate his/her/its investment and that he/she/it can afford the loss of his/her/its entire investment.

And also that:

"*Subscribers should be aware that they will be required to bear the risks of this investment for an indefinite period of time.*"

So, an investment in the bond was not realisable within 30 days and the bond was therefore not a standard asset (as per IPRU-INV 5.9.1 R). So, I do not think it was reasonable for Dentons to accept the investment on the basis of it being a standard asset.

At the time of the application for Mr W's SIPP the bond was not "traded on a regulated exchange". As set out above, Mr W's SIPP was applying to invest in the private placement of a bond which had yet to be listed – it was only listed after Mr W invested. So, this was not an on-exchange open market transaction; the bond was not being traded on the exchange. Nor was the bond listed at the time of Mr W's application – that is clear from the application form, which was completed by Dentons.

I appreciate the bond Mr W's SIPP invested in was, ultimately, listed; so, it could be argued Dentons' apparent misunderstanding on this point has not had a material impact as what it appears to have understood was what ultimately transpired. And I think it was reasonable to take some comfort from the listing on a recognised exchange. However, this – when considered alongside the basis on which Dentons otherwise accepted the bond, and the regulatory obligations and standards of good practice at the time - was not a reasonable basis in itself on which to conclude the investment in the bond should be accepted.

I say this because, setting aside that the bond was not actually listed at the time of the application, the listed status in itself did not give Dentons' a basis to disregard all the other characteristics of Mr W's application to invest and – as I set out below – I think those characteristics did show there was a significant risk of consumer detriment here.

I also think the nature of the intended listing should have been considered. As mentioned above, it seems it was listed on the "Mezzanine" exchange, which meant the requirements to become listed were limited and, accordingly, restrictions were put on who could invest. This is something Dentons does not appear to have identified; or at least not considered. And it was in my view material.

I've not seen any evidence of any platform other than A having accepted investments in the bond. In any event, whilst Dentons could perhaps take some comfort from other market participants having accepted the bond, it could not reasonably rely on that as a basis for accepting the investment itself; it had its own independent regulatory obligations.

Pausing there, I think it is relevant to note A seems to have accepted – at least tacitly – that it should not have accepted the bond as it has apparently paid out investors at its own cost; a move it would have been unlikely to make if it thought there were no issue with its acceptance of the bond. In a similar vein, as noted above, A apparently said at a meeting in 2018 at which Dentons was present that it was "*very concerned with the structure and validity of the Centaur/Delta Bond investment*". This suggests it had come to the realisation there may be issues with it having accepted the investment. I mention this as relevant not because Dentons ought to have been aware of this at the time of Mr W's application, but because it illustrates the importance of Dentons' taking its own, independent, steps to meet its regulatory obligations rather than making assumptions about the decisions made by other market participants.

Finally, I do not think it was reasonable to solely rely on MedDen's advice – particularly in circumstances where Dentons had not seen any detail of the basis on which that advice had been given. Again, this was something Dentons could have taken some comfort from, but it could not reasonably rely on what was being done by another market participant to fulfil its own, independent, regulatory obligations. I do not think it was consistent with Dentons' regulatory obligations to simply assume Mr W had been suitably advised as use that a basis for not carrying out any checks on the bond before it allowed it in Mr W's SIPP.

What should Dentons have done?

I think Dentons should have identified Mr W's application to invest in the bond as one which carried with it a significant risk of consumer detriment. Mr W was applying to invest £300,000 in the private placement of a bond issued by a business with little or no track record, focussed on one industry sector (mining), which was to be listed on the Mezzanine level of the Bermuda Stock Exchange, through a business based in Dubai which was connected in some way (it was at least part of the same overall group of businesses) to the issuer of the bond. And he was doing so having transferred an occupational scheme with a value of around £800,000 to the SIPP when he was approaching his retirement age.

Dentons position seems to be that there was nothing unusual i.e. anomalous about such an application. I disagree; I think this business should reasonably have been considered anomalous. I think it reasonable to say that the possibility of this being suitable for any retail client were very small. Even if I were to accept the investment itself should not have been viewed as anomalous, it is the sort of investment you would expect to form a small part of an overall portfolio, not around 40% of the pension scheme of someone in their late 50s.

Although I acknowledge Mr W had received advice from MedDen, as I set out above, I do not think Dentons could rely entirely on this – it should nonetheless have identified a risk of consumer detriment and have been mindful of its own, individual, regulatory obligations to treat Mr W fairly, act in his best interests and conduct its business with due skill, care and diligence.

Dentons makes a number of references to Mr W being sophisticated – the inference being it could take considerable reassurance from this when considering whether to allow the investment. This seems to suggest it allowed Mr W's investment exceptionally. But Dentons has also told us it accepted a number of other applications to investment in the Centaur Bond and has not suggested all those consumers were sophisticated too. And I've not seen any evidence to show it was a factor in its thinking at the time it accepted Mr W's application. So, I think this is a point which is being made in hindsight, in an effort to defend its decision to accept the investment.

Nonetheless, I have considered whether Dentons could reasonably have concluded the risk of consumer detriment was reduced here, on the basis of Mr W being a sophisticated investor. And I do not think Dentons could reasonably have drawn such a conclusion.

Dentons "Statement for certification of Sophisticated and HNW investors", required Mr W to "*declare (and provide evidence if required) that you are a Self-certified sophisticated investor **or** a Certified high net worth individual, as defined below*" (my emphasis). Mr W said he was a "Certified high net worth individual", rather than a Self-certified sophisticated investor. So, the statement did not require Mr W to declare he was sophisticated and he did not give any such declaration; I do not therefore think Dentons could reasonably have used the statement as a basis to conclude Mr W was a sophisticated investor.

Nor have I seen sufficient evidence to show Mr W was, in fact, a sophisticated investor, either in terms of the definition of that in the relevant legislation (Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001) or the common and ordinary meaning.

Mr W worked as an accountant for a large business (where he accumulated the occupational pension benefits he transferred to Dentons' SIPP), and was made redundant from that role. He then ran a small business running buy to let properties. Whilst it might be reasonable to infer from this that he had a degree of general financial sophistication I do not think it necessarily follows he had investment sophistication; certainly not to an extent where he

could reasonably have been considered to have a degree of expertise in overseas debt instruments listed on the Mezzanine level of the Bermuda stock exchange. There is no evidence he had experience of dealing in pre-listing private placings of bonds issued by a Bermudan business through a distributor in Dubai, or anything remotely similar; his pensions, before the transfer and switch to Dentons SIPP, appear to have been invested in vanilla investments. And his assets otherwise appear to have been invested in buy to let properties.

So, it was not in my view fair and reasonable for Dentons to limit due diligence based on an understanding Mr W was a sophisticated investor and therefore capable of fully assessing the risks for himself. I am satisfied it is fair and reasonable to find Dentons should have carried out due diligence in this instance which was consistent with its regulatory obligations and standards of good practice at the time. And, as set out above, the FCA's "Dear CEO" letter sets out how a SIPP operator might meet its regulatory obligations when carrying out investment due diligence. Which includes correctly establishing and understanding the nature of an investment.

Dentons did take some steps to carry out due diligence (appointing a third party to carry it out on its behalf) which was consistent with its regulatory obligations and standards of good practice at the time; but in 2018, rather than at the time of Mr W's application. Its reasons for doing so at that time were explained as follows:

"*the shape of the SIPP market is changing following a number of high profile court cases and challenges from the FCA around SIPP firms due diligence processes*"

However, in my view, nothing had changed between the time of the application from Mr W's SIPP to invest in the bond and the time this due diligence was carried out. So, before accepting Mr W's application to invest in the bond in his SIPP Dentons should have carried out due diligence of at least the standard which was carried out in 2018.

Had Dentons carried out appropriate due diligence at the time of Mr W's application to invest in the bond I think it is more likely than not that it would have drawn the same conclusion that it did in 2018. That is to say I think it would have concluded in 2017 what it concluded in 2018 - that it should *not* allow the investment.

I do not have the full detail of what the 2018 due diligence revealed – but, in its 27 July 2018 email to MedDen, Dentons said:

- The status of the issuer of the bond had been called into question, as there was apparently no verification it was authorised by the Bermuda Monetary Authority.

- The bond was it was "doubly risky" as it was both unregulated and not a collective but issued by one company.

- Setting these points aside, the "*impact scores*" (I assume this refers to something in the third party due diligence report) would only allow a maximum of 30% of the value of the SIPP to be invested.

This seems to be a fair and reasonable basis on which to conclude the investment should not be accepted – particularly keeping in mind what I say below about what Dentons knew at the time about the introductions of business MedDen. And there is nothing to suggest any of that would have been different in 2017. So, it seems more likely than not that adequate due diligence in 2017, before Mr W's application, would have led to the same conclusion as was drawn in 2018 i.e. that the Centaur Bond was not an appropriate investment for the SIPP.

With this – and what I say below about MedDen – in mind, I think it fair and reasonable to find Dentons should have rejected the application to invest in the Centaur Bond.

The introduction from MedDen

Based on the evidence available I think the nature of the introductions (including Mr W's) from MedDen gave Dentons further reason to conclude there was a risk of consumer detriment associated with the application to invest in the Centaur Bond (and this in my view adds weight to my findings above on the need to carry out investment due diligence and the conclusions that ought to have been drawn from it).

MedDen was a UK based, FCA authorised firm, with the permission to carry out the activities in question. Dentons could take comfort from that, and a reasonable starting point was that it should accept applications referred by MedDen. But that should not have been the end of matters. Dentons had its own, distinct, regulatory obligations and those obligations, coupled with standards of good practice, meant it could not reasonably simply rely on MedDen's authorised status when assessing the risk associated with introductions of business from MedDen.

The reports and guidance from the regulator, set out above, gave relevant examples of the sort of good practice which should be carried out to meet regulatory obligations.

The FSA's 2009 Thematic Review Report

Routinely recording and reviewing the type (i.e. the nature of the SIPP investment) and size of investments recommended by intermediaries that give advice and introduce clients to the firm, so that potentially unsuitable SIPPs can be identified.

Requesting copies of the suitability reports provided to clients by the intermediary giving advice. While SIPP operators are not responsible for advice, having this information would enhance the firm's understanding of its clients, making the facilitation of unsuitable SIPPs less likely.

The FCA's October 2013 Finalised Guidance:

Understanding the nature of the introducers' work to establish the nature of the firm, what their business objectives are, the types of clients they deal with, the levels of business they conduct and expect to introduce, the types of investments they recommend and whether they use other SIPP operators. Being satisfied that they are appropriate to deal with.

These publications significantly post-date Mr W's application so there can be no question Dentons should have reasonably been aware of the sorts of steps it should have been taking. However, in the event, it seems, although Dentons does have records of the introductions it was receiving, it relied wholly on MedDen's authorised status when accepting business.

In my view, Dentons should have given more careful consideration to things than this; particularly given the information available to it at the time of Mr W's application. Dentons has told us it received 11 applications in total from MedDen, from October 2014 to June 2018, 9 of which featured Centaur Bond investments. And Mr W's application was the 10th application it received.

This overall number of applications over such a period of time should not reasonably have given Dentons cause for concern, in itself. But the proportion investing in the Centaur Bond should, in my view, have given some cause for concern. As mentioned above, I think one

application to make an investment in the Centaur Bond might have been viewed as anomalous. And I think any introductions of business which mostly featured such investments should have been viewed as carrying a risk of consumer detriment.

It also seems there was some pressure to proceed with Mr W's application from MedDen. MedDen referred (in its 13 January 2017 email to Dentons), without further explanation, to it being very urgent that money was sent for investment in the bond, and made reference to "*heavy legal fees*" being incurred should this not happen. Given that Dentons understanding at the time appears to have been that Mr W was simply buying a listed bond on a recognised exchange, I think it ought to have considered on what basis Mr W had reached a "*deal*", as Dentons puts it, which was so time sensitive and might incur large legal fees if it was not concluded quickly. Dentons should have been alive to the risk that MedDen might be putting its own interests ahead of Mr W's by pushing for the investment to be made quickly, and to have considered what reasons there might be for this.

With these points in mind, Dentons should have considered MedDen's motivations and checked to see how it was ensuring the investment was suitable. It was unlikely all the applications MedDen introduced could all have been suitable given the risks associated with the Centaur Bond and, given what Dentons says it understood about the Centaur Bond at the time, it should have questioned why there was such urgency and references to "*deals*" and legal fees.

Had Dentons made enquiries it seems unlikely it would have been able to reasonably satisfy itself there was no risk of consumer detriment. Mr W referred a complaint to us against MedDen about the advice he was given by it. That complaint was not ultimately resolved by us as MedDen went out of business (as mentioned above, Mr W later made a claim to the FSCS was paid compensation by it). But we do have a complaint file for the complaint against MedDen. This shows MedDen, on referral of Mr W's complaint to us, said it considered the Centaur Bond to be a "*low risk investment; a standard asset with full liquidity*". And the advice file shows Mr W was assessed as having a low to medium attitude to risk. Furthermore, MedDen's suitability report, setting out its advice, refers only to the use of a DFM to manage the money in the SIPP, using A's investment platform, not to a large direct investment in the Centaur Bond. So, the basis on which MedDen concluded an investment in the Centaur Bond was suitable for Mr W is unknown.

My view on this point is further supported by the FCA Final Notices Dentons refers to in its response to my provisional decision. The Notices deal with breaches of an asset requirement the FCA had put in place. But, as Dentons notes, by way of background, the Notices refer to a FCA visit to MedDen at 4.5:

"*The Authority visited MedDen in November 2018. After carrying out a review of customer files, the Authority was concerned that there were significant issues with MedDen's advice process, resulting in unsuitable advice being provided by MedDen to its customers regarding investments into the Centaur Bond.*"

Further enquiries by Dentons to MedDen are therefore unlikely to have led to a reasonable conclusion that the risk of consumer detriment associated with the application to invest in the Centaur Bond was in some way limited by MedDen's involvement – they are instead likely to have revealed MedDen did not understand (or was not accurately disclosing) the risks associated with investing in the Centaur Bond (which was clearly not, by any reasonable measure, low or low to medium risk) and had not explained to Mr W (or at least not explained in writing) why it thought such large investment in the bond was suitable for him. They ought therefore to have intensified Dentons' concerns.

However, I remain of the view this was reason to be careful about accepting the application to invest in the Centaur Bond rather than reason not to deal with MedDen at all – although I do still think this is a finely balanced point. If the Centaur Bond investment had not been allowed by Dentons I think it likely the application would still have proceeded, but with all the money going to A, as it seems MedDen initially recommended. And it would not, in my view, be fair and reasonable to say Dentons should not have accepted an application made on that basis.

The available evidence shows Mr W was keen to make a transfer from his occupational scheme, as the plans he had made were dependent on him being able to use his pension more flexibly than he could if he remained in his occupational scheme. He was also clearly willing to accept the advice MedDen initially gave. And, although MedDen seemed to have a particular interest in putting some of Mr W's money into the Centaur Bond (I note Mr W has suggested there may have been a connection between MedDen and Centaur AM) I think, even if it could not have achieved that aim, it would nonetheless have been keen to proceed with what was a significant piece of business.

A is a large, long-established financial services company and one of the biggest investment platform service providers in the UK, and an independent business – the DFM – was being appointed to manage the money being sent to A. I do not therefore think it is fair and reasonable to say if the application had been resubmitted by MedDen to Dentons with the whole sum to go to A to be managed by a DFM Dentons should have at that point refused to accept it.

Fees

Mr W has made a number of references to the fees taken by Dentons since his SIPP was opened. He has disputed the amount some of the fees taken by Dentons during the time his whole pension was in the SIPP, and the fairness of charging fees since all but the Centaur Bond has been transferred to another pension scheme.

I have not seen sufficient evidence to show Dentons acted unfairly when taking fees whilst Mr W's whole pension was in the SIPP. Those fees appear to have been charged as per the terms under which the SIPP was established. And, as I have found the SIPP would still have been established even if the Centaur Bond investment application had not been accepted by Dentons, I do not think there is any basis on which it would be fair and reasonable for me to require Dentons to refund some or all of those fees; I think they would likely have been payable by Mr W, in any event.

In my provisional decision I explained my view was that, once Mr W transferred his pension away, it was not fair for Dentons to continue charging fees. This was because the SIPP could not be closed because of Dentons accepting the investment in the Centaur Bond when it should not reasonably have done so i.e. it is a consequence of Dentons' failings. So, Dentons should bear any cost of keeping the SIPP open until such a time as matters with the Centaur Bond are resolved and the SIPP can be closed. I invited Dentons to confirm its intentions in relation to fees for this period.

In response to this, Dentons said it intended to charge 25% of the fees due over this period, and referred to a decision we had issued on another complaint finding this was reasonable. I have considered this. The circumstances of this complaint are very different to that of the complaint in the decision Dentons has referred to. Critically, there was no finding in the other complaint that Dentons should simply have not allowed the investment in question. In this case, my finding is that the investment in question should not have been allowed by Dentons, and the acceptance of that investment is the only reason the SIPP remains open. I

remain of the view it is not fair in these circumstances for Dentons to charge fees over the period in question. I consider what that means for fair compensation below.

is it fair to require Dentons to compensate Mr W?

As I have set out above, it is my view that the transaction would likely have proceeded on a different basis – with all the money going on to A's platform, to be managed by a DFM – had Dentons rejected Mr W's application to invest in the Centaur Bond.

When considering this from the perspective of fair compensation, I don't have to be satisfied that there is no possibility that things would not have progressed as they did if Dentons had done what I think it ought to have. I must only be satisfied that, on balance, it is more likely than not Mr W would have made an alternative investment. And I am satisfied it is more likely than not the transaction would have proceeded as I have described.

I accept it is possible MedDen would not have advised the transfer, or that Mr W would have cancelled it, if Dentons had said it would not allow the Centaur Bond investment. It is also possible MedDen would have tried to find another SIPP operator which would allow the Centaur Bond investment. But I do not think any of these outcomes are more likely than Mr W proceeding as I have described.

So, I am satisfied that Mr W would have continued with the SIPP, but would not have gone ahead and made the Centaur Bond investment. And, whilst I accept that MedDen is responsible for initiating the course of action that has led to the loss Mr W suffered through making the Centaur Bond investment, I consider that Dentons failed unreasonably to put a stop to that course of action when it had the opportunity and obligation to do so.

As an aside, I should note here that I am aware that Mr W did, ultimately, invest in a similar bond to the Centaur Bond (the Delta Bond) on A's platform, and there is an allegation that these investments were instructed by MedDen without the DFM's knowledge. And Dentons may therefore argue that Mr W may have ended up in broadly the same position regardless, as some of his money would have ended up in a bond issued by Centaur GF, with the same result (as it seems all the bonds issued by Centaur GF were ultimately suspended). I do not think it would be fair and reasonable to make such a finding.

It is not certain that more money would have been invested in the Delta bond, had more money been put on A's platform. In any event, with the exception of the Delta Bond, the money on A's platform appears to have been invested in mainstream regulated collective investment schemes; and Mr W did not ultimately suffer a loss through any Delta Bond investment, as A returned the capital he invested plus interest. So, I think any money put on A would either have been conventionally invested or, if invested in the Delta Bond, returned to Mr W with interest at A's own cost. Either way, the loss Mr W suffered through the direct investment he made in the Centaur Bond would not have been suffered, had Dentons not accept the application to make that investment. I will set out below what I think this means, for the purposes of assessing the amount of loss Mr W has suffered.

<u>The involvement of other parties</u>

In this decision I'm considering Mr W's complaint about Dentons. But I accept other parties were involved in the transactions complained about, including MedDen. Mr W has pursued an FSCS claim against MedDen, and has been paid £85,000 compensation by it.

As mentioned above, Dentons has referred to the Final Notices recently issued against some of MedDen's former advisors. Dentons says it would be inconsistent with the FCA's findings for me to find that it is wholly liable for Mr W's losses. And it says the Notices say

redress was owed by MedDen due to the poor advice given by it; not the failings of any other parties, including SIPP operators.

I have given careful consideration to the points Dentons has made, but remain of the view set out in my provisional decision.

The DISP rules set out that when an Ombudsman's determination includes a money award, then that money award may be such amount as the Ombudsman considers to be fair compensation for financial loss, whether or not a Court would award compensation (DISP 3.7.2R).

In my opinion it's fair and reasonable in the circumstances of this case to hold Dentons accountable for its *own* failure to comply with its regulatory obligations, good industry practice and to treat Mr W fairly. Clearly Mr W was unsuitably advised by MedDen; but the enactment of that advice was dependent on Dentons' acceptance of the Centaur Bond investment. And, for the reasons I have set out, it was not, in my view, fair and reasonable for Dentons to allow the Centaur Bond investment, in the circumstances. My view on fair compensation for that failing by Dentons is not changed by FCA Final Notices which deal solely with the actions of MedDen and relate to the breach of an asset requirement by advisors at MedDen.

Given the above, I remain of the view that the starting point is that it would be fair to require Dentons to pay Mr W compensation for the loss he has suffered as a result of its failings. I have again carefully considered if there is any reason why it would not be fair to ask Dentons to compensate Mr W for his loss.

As I have set out, I accept that other parties, including MedDen, have some responsibility for initiating the course of action that led to Mr W's loss. However, I'm satisfied that it's also the case that if Dentons had complied with its own distinct regulatory obligations as a SIPP operator, the investment wouldn't have come about in the first place, and the loss he's suffered could have been avoided.

It therefore remains my view that it's appropriate and fair in the circumstances for Dentons to compensate Mr W to the full extent of the financial losses he's suffered due to its failings. 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 Dentons is liable to pay to Mr W.

Mr W taking responsibility for his own actions and decisions

In reaching my conclusions in this case I've thought about section 5(2)(d) of the FSMA (now section 1C). This section requires the FCA, in securing an appropriate degree of protection for consumers, to have regard to, amongst other things, the general principle that consumers should take responsibility for their own investment decisions.

I've considered this point carefully and I'm satisfied that it wouldn't be fair or reasonable to say Mr W's actions mean he should bear the loss arising as a result of Dentons' failings.

In my view, if Dentons had acted in accordance with its regulatory obligations and good industry practice it shouldn't have accepted Mr W's application to invest in the Centaur Bond. That should have been the end of the matter – if that had happened, I'm satisfied the arrangement for Mr W wouldn't have come about in the first place, and the loss he's suffered could have been avoided.

As I've made clear, Dentons needed to carry out appropriate due diligence on the Centaur

Bond and reach fair conclusions. I think it failed to do this. I acknowledge that Mr W provided Dentons with signed paperwork, which did give confirmations of his understanding of the risk associated with the Centaur Bond. But having Mr W sign forms containing declarations and indemnities wasn't an effective way of Dentons meeting its obligations, or of escaping responsibility where it failed to meet its obligations.

So, I'm satisfied that in the circumstances, for all the reasons given, it's fair and reasonable to say Dentons should compensate Mr W for the loss he's suffered. I don't think it would be fair to say in the circumstances that Mr W should suffer the loss, or part of it, because he ultimately signed the application documentation and instructed the transaction to be executed.

Fair compensation

Mr W's investment in the Centaur Bond

My aim is that Mr W should be put as closely as possible into the position he would probably now be in if he had been given suitable advice.

I think Mr W would have invested differently. As I set out above, I think that would have involved the money going on to A's platform and being managed by a DFM. But it's not possible to say *precisely* how the money would have been invested. So, I'm satisfied that what I've set out below is fair and reasonable given Mr W's circumstances and objectives when he invested.

What must Dentons do?

To compensate Mr W fairly, Dentons must:

- Compare the performance of Mr W's investment with that of the benchmark shown below. If the *actual value* is greater than the *fair value*, no compensation is payable.

If the *fair value* is greater than the *actual value* there is a loss and compensation is payable.

- Dentons should also add any interest set out below to the compensation payable.

- If there is a loss, Dentons should pay into Mr W's pension plan to increase its value by the amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

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

- The *notional* allowance should be calculated using Mr W's actual or expected marginal rate of tax at his selected retirement age.

- It's reasonable to assume that Mr W is likely to be a higher rate taxpayer at the selected retirement age, so the reduction would equal 40%. However, if Mr W would

have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 30%.

Income tax may be payable on any interest paid. If Dentons deducts income tax from the interest, it should tell Mr W how much has been taken off. Dentons should give Mr W a tax deduction certificate in respect of interest if Mr W asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Centaur Bond	Still exists but illiquid	FTSE UK Private Investors Income Total Return Index	Date of investment	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of Dentons receiving Mr W's acceptance)

Actual value

This means the actual amount payable from the investment at the end date.

It may be difficult to find the *actual* value of the investment. This is complicated where an investment is illiquid (meaning it could not be readily sold on the open market), as in this case. Dentons should take ownership of the illiquid investment if it can, by paying a commercial value acceptable to it. The amount Dentons pays should be included in the actual value before compensation is calculated.

If Dentons is unable to purchase the investment the *actual value* should be assumed to be nil for the purpose of calculation (save for what I say below about the income payments made). If it pays the full amount of fair compensation, Dentons may require that Mr W provides an undertaking to pay Dentons any amount he may receive from the investment in the future. That undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan. Dentons will need to meet any costs in drawing up the undertaking.

I understand the Centaur Bond did make income payments into the SIPP for a period of time – these should be taken into account in the actual value. They can either be rolled up and taken off the fair value amount, once it has been calculated, or taken out of the fair value calculation as withdrawals, as and when they were paid.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

Why is this remedy suitable?

I've chosen this method of compensation because:

- Mr W wanted Capital growth and was willing to accept some investment risk.

- The FTSE UK Private Investors Income *Total Return* index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.

- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr W's circumstances and risk attitude.

FSCS compensation

I acknowledge that Mr W has received a sum of compensation from the FSCS, and that he has had the use of the money he received from the FSCS. The terms of Mr W's reassignment of rights require him to return compensation paid by the FSCS in the event this complaint is successful, and I understand that the FSCS will ordinarily enforce the terms of the assignment if required. So, I think it's fair and reasonable to make no permanent deduction in the redress calculation for the compensation Mr W received from the FSCS. And it will be for Mr W to make the arrangements to make any repayments he needs to make to the FSCS. However, I do think it's fair and reasonable to allow for a temporary notional deduction equivalent to the payment Mr W actually received from the FSCS for a period of the calculation, so that the payment ceases to accrue any return in the calculation during that period.

As such, if it wishes, Dentons may make an allowance in the form of a notional withdrawal (deduction) equivalent to the payment Mr W received from the FSCS following the claim about MedDen, and on the date the payment was actually paid to Mr W. Where such a deduction is made there must also be a corresponding notional contribution (addition), at the date of my final decision, equivalent to all FSCS payment(s) notionally deducted earlier in the calculation.

Fees

The SIPP only exists because of the Centaur Bond. In order for the SIPP to be closed and further fees that are charged to be prevented, that investment needs to be removed. I've set out above how this might be achieved by Dentons taking over the investment.

If Dentons is unable to purchase the investment, to provide certainty to all parties I think it's fair that it pays Mr W an upfront lump sum equivalent to five years' worth of SIPP fees (calculated using the fee in the previous year to date). This should provide a reasonable period for the parties to arrange for the SIPP to be closed.

As I have set out above, I think it reasonable for Dentons to retain the fees it charged whilst the entirety of Mr W's pension was with it. And I have addressed the future fees above. But I recognise this leaves a question about the fees levied since Mr W's SIPP was (with the exception of the Centaur Bond) transferred to another provider. I understand these have been accrued but not paid by Mr W. As noted above, Dentons says it intends to charge fees at 25% of the full amount, referring to a decision on another complaint by this service. But, in the circumstances, I do not think it fair for Dentons to charge any fees at all, once the investments other than the Centaur Bond were moved away from the SIPP. So, if Dentons does charge fees for the period from when the remainder was transferred away until the date of this decision, it should also pay Mr W an amount of compensation equivalent to what it charges, to ensure there is no net cost to Mr W.

Distress and inconvenience

I think compensation of £500 is fair, for the distress and inconvenience caused to Mr W. It is clear Dentons' acceptance of the Centaur Bond has caused Mr W some upset and, as he mentions, it has had an impact on his retirement planning. So, Dentons should pay Mr W £500 for the distress and inconvenience caused.

My final decision

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £160,000, plus any interest and/or costs that I consider appropriate. If I consider that fair compensation exceeds £160,000, I may recommend that Dentons Pension Management Limited pays the balance.

Determination and award: I uphold the complaint. I consider that fair compensation should be calculated as set out above. My decision is that Dentons Pension Management Limited should pay the amount produced by that calculation up to the maximum of £160,000 plus any interest on that amount as set out above.

Recommendation: If the amount produced by the calculation of fair compensation exceeds £160,000, I recommend that Dentons Pension Management Limited pays Mr W the balance plus any interest on the balance as set out above.

If Dentons Pension Management Limited does not pay the recommended amount, then any investment currently illiquid should be retained by Mr W. This is until any future benefit that he may receive from the investment together with the compensation paid by Dentons Pension Management Limited (excluding any interest) equates to the full fair compensation as set out above.

Dentons Pension Management Limited may request an undertaking from Mr W that either he repays to Dentons Pension Management Limited any amount Mr W may receive from the investment thereafter, or if possible transfers the investment to Dentons at that point.

Mr W should be aware that any such amount would be paid into his pension plan so he may have to realise other assets in order to meet the undertaking.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 17 January 2025.

John Pattinson
Ombudsman