DRN-5207520

The complaint

Mr S says that Dentons Pension Management Limited ('Dentons') should not have accepted the instruction from his financial adviser to transfer personal pensions to a Self-Invested Personal Pension ('SIPP'). He also says that Dentons failed to carry out sufficient due diligence on the investments he went on to make, which has caused a loss to his pension.

What happened

I've outlined the key parties involved in Mr S's complaint below.

Involved parties

Dentons

Dentons is a regulated pension provider and administrator. It's authorised to arrange deals in investments, deal in investments as principal, establish, operate or wind up a personal pension scheme and to make arrangements with a view to transactions in investments.

Grosvenor Butterworth (Financial Services) Ltd ('GBFS')

GBFS was an independent financial adviser. It was authorised and regulated by the Financial Conduct Authority ('FCA') at the relevant time until 12 October 2018. GBFS had permission to advise on pensions and investments. GBFS appointed a voluntary liquidator in January 2018 and its company status is currently showing as in 'Liquidation'.

SVS Securities Plc ('SVS')

SVS was a Discretionary Fund Manager ('DFM'). SVS was regulated by the FCA. However the FCA issued a First Supervisory Notice to SVS on 2 August 2019 and it went into special administration on 5 August 2019, dissolving on 10 August 2023. The Financial Services Compensation Scheme ('FSCS') is now accepting claims against SVS.

Independent Portfolio Managers Limited trading as Smile Global Management ('IPM')

IPM was an investment portfolio manager which had been regulated since 1 December 2001. It had its regulatory status revoked by the FCA on 21 June 2018 following enforcement action. The FCA issued a Warning Notice on 12 April 2018 and a Decision Notice on 2 May 2018. The Final Notice issued by the FCA on 21 June 2018 stated that IPM had failed to meet the suitability Threshold Condition, in that the FCA was not satisfied that IPM was fit and proper having regard to all the circumstances, including whether IPM managed its business in such a way as to ensure that its affairs were conducted in a sound and prudent manner. It also said IPM had failed to pay an overdue balance and hadn't been open and co-operative in all of its dealings with the FCA.

IPM was declared in default by the FSCS in December 2018 and the FSCS is accepting claims against it.

What happened here

Mr S had two personal pensions. In 2014 he says he was "cold-called" by a company, 'First Pension Review Service', who introduced him to GBFS. Mr S says he was then advised by GBFS to transfer his pensions to a Dentons SIPP.

Mr S says he had no understanding of where his pension monies would be invested – he only recalls GBFS mentioning Dentons to him. At the time of the advice, Mr S said he had a low-to-medium attitude to risk and he had no desire or need to invest in anything other than standard assets. Mr S added that he had no expertise in pensions.

On 8 April 2014, GBFS sent Dentons Mr S's completed SIPP application form. The covering letter showed it had also included transfer discharge forms for his existing pensions.

The application form gave the details of two personal pensions that Mr S wished to transfer into the SIPP, which had a combined transfer value of around £52,000. No investment details were provided. Mr S signed the member declaration on 26 March 2014, which said:

"I confirm that I have been provided with a copy of the Scheme's Key Features document and I have received, read and agree to the Terms and Conditions of Business and the Schedule of Services for Dentons Pension Management Limited. Whilst Denton & Co Trustees Limited is not authorised to give restricted investment advice, Dentons Pension Management Limited is so authorised but, ordinarily, will not provide investment advice to individuals implementing a Dentons SIPP. I understand that I should seek professional advice in connection with all, or any, investments to be held within my SIPP and will invest in accordance with that advice. I understand that Dentons Pension Management Limited cannot comment on, nor take any responsibility for the claims of, or performance of, any asset chosen by me and held within my plan."

Following this statement, the form asked *'Have you received advice? (delete as appropriate)'* – there were then 'yes' and 'no' statements, but neither were deleted. However, the details of GBFS were given in the Financial Adviser details section of the application form. But no provision had been made for financial adviser remuneration.

On 15 May 2014, Dentons sent an email to GBFS confirming receipt of the SIPP application. It said that it understood Mr S wished to invest in an Aviva platform following the completion of the transfers and asked for some further details about Mr S's risk profile and the relevant charges so it could prepare an illustration.

GBFS responded on the same day saying that Mr S had an attitude to risk rating of '5 out of 10', which in other terms was known as 'balanced'. And said the charges, including the DFM charge, totalled 1.31%.

On 28 May 2014, around £16,000 was received into the SIPP from one of Mr S's previous pension plans. The funds from the second pension, around £39,000, were received into the SIPP on 9 June 2014.

GBFS issued a 'Financial Planning Report' (which I'll refer to as the 'suitability report') on 30 May 2014. It recommended Mr S should transfer his two personal pension schemes, which had a transfer value of around £55,000, to a Dentons SIPP. It stated that Mr S required a SIPP so that he could invest in non-standard assets, including third-party loans and unlisted shares. The suitability report noted that GBFS had assessed Mr S's attitude to risk as 'low-medium' but that it hadn't provided any advice on how his pension funds would be invested. It said this would be provided on completion of the transfer, but warned that it couldn't provide any advice on non-standard assets.

Although Mr S has no recollection of any investment strategy being discussed with him, it appears that GBFS sought to arrange an investment account with a DFM I'll call 'Firm V'. GBFS provided Dentons with an application form for an account with Firm V on 20 June 2014. This included details of Mr S's income and investment experience. It also recorded that Mr S had 'never/rarely' traded in the following:

- Over the counter ('OTC') derivatives such as foreign exchange ('FX') and contracts for difference ('CFDs');
- Exchange traded derivatives ('ETD') such as Futures and Options;
- Securities such as shares and bonds

The application form also asked:

"Do you have educational, professional qualifications or work experience that you consider allows you to fully understand the risks of the products listed above?"

The box for 'no' was ticked.

The application form then gave options as to which products were to be traded and the boxes were ticked for all of the following:

- Foreign Exchange
- CFDs
- Equities
- Futures

The application form further set out the fees that applied and would be payable to the 'Appointee'. It said an annual trading commission fee of 1.5% was payable and a performance fee of 30% also applied. The application form included a Limited Power of Attorney ('POA') form in which the SIPP trustee, Dentons, appointed Independent Portfolio Managers Limited ('IPM' – trading as Smile Global Management) to be Mr S's attorney. This meant that IPM was the Appointee, and it was granted the power to give dealing instructions on the account.

Despite the application having been submitted to Dentons, and signed by Dentons in various places, based on correspondence I've seen in July and August 2014, this didn't go ahead. An email dated 6 August 2014 from Dentons to Firm V stated that Dentons had been informed that Mr S had wanted to invest in a particular fund which Firm V was no longer offering. So, he wouldn't be proceeding with the account opening.

As such, GBFS wrote to Dentons on 11 August 2014, enclosing an application to transfer £52,000 of the funds held in the SIPP to an account with SVS. The application form was more or less identical to the application form submitted for the account with Firm V. It included the same details of Mr S's experience of investing and the types of investments he would be making through SVS. The same fees applied and Mr S also signed the POA appointing IPM. Mr S had signed the application forms on 5 August 2014.

Mr S says he recalls being given the SVS application to sign but maintains no explanation was given to him about how the funds would be invested.

On 29 August 2014, SVS invested £22,000 of Mr S's pension funds in shares in Etaireia Investments Plc. Various other investments were purchased between 1 September 2014 and 8 April 2015 as follows:

- Auhua Clean Energy Plc
- Beowulf Mining
- Clontarf Energy
- Connemara Mining Plc
- Etaireia Investments Plc
- Hikma Pharmaceuticals
- MPorium Group Plc
- Nostra Terra Oil and Gas Company
- Plethora Solutions HLDG
- Redrow
- Tullow Oil Plc

Following the purchase of these investments, the remaining cash balance in the SVS account was around £1,000.

In March 2015 Dentons sent GBFS a SIPP illustration which showed that over 95% of Mr S's funds were held in a 'Discretionary High Risk' fund.

A portfolio valuation statement generated in June 2015 showed the portfolio was valued at around £29,000, which included cash of around £3,000.

Mr S's representative complained to Dentons on his behalf in February 2017; it said Dentons had failed to question or carry out any due diligence checks on the investments SVS made for Mr S. It said Dentons was aware of Mr S's low-medium attitude to risk but permitted high risk investments. For example, the purchase of 8.8 million shares in Etaireia Investments Plc, whose share value was 0.0025p was clearly pure speculation and only suitable for the most high risk investor who could easily afford to lose their entire investment. It said Mr S suffered significant losses very soon after making the investments. It added that Mr S had also made a complaint to GBFS.

As Mr S didn't receive a response from Dentons, Mr S's representative subsequently referred the complaint to the Financial Ombudsman Service.

In February 2018 Mr S's representative said that because GBFS had entered liquidation, his complaint had been referred to the FSCS. It added that Mr S had been able to recover £13,316.71 from SVS, and he had now transferred all of the funds out of the SIPP to another pension provider.

In August 2018 Mr S's representative explained that the FSCS had finalised Mr S's claim against GBFS and he had received the maximum compensation of £50,000. However, the FSCS had calculated his remaining loss in excess of the compensation paid to be around £10,600, so Mr S wished to pursue Dentons for the remaining loss.

In March 2019, the FSCS subsequently gave Mr S a reassignment of rights to enable him to pursue a complaint against Dentons.

Our Investigator asked Dentons to provide its file and asked questions about the due diligence checks it had carried out on GBFS and SVS so that they could consider the complaint further.

Dentons said it hadn't received the details of Mr S's complaint but ultimately provided a response to it in June 2020. That response said Dentons is a SIPP administrator and it does not provide advice. It noted that Mr S had received advice from GBFS to set up the SIPP

and make the investments so Mr S's complaint was more appropriately addressed to GBFS. However, it said that Mr S's representative had made inaccurate statements about the investments SVS had made for Mr S. For example, regarding the initial investment made into Etaireia Investments Plc; this was an investment in a company that was trading on the London Stock Exchange ('LSE') so it was permitted in the SIPP.

Dentons said it had carried out proportionate due diligence before the SIPP was opened. It said:

- It is standard practice for Dentons to verify that independent financial advisers ('IFAs') who were advising prospective clients were appropriately authorised by the FCA and held the required Permissions enabling it to give such advice. A standard review of the FCA Register confirmed that GBFS was so authorised.
- It is also standard practice for Dentons to check the bona-fides of such IFAs by reviewing the information publicly available on the Companies House Register of Companies. At the time of the initial involvement with GBFS, there was nothing on the Companies House Register to give Dentons cause for any concerns.
- It is standard practice for Dentons to verify that the proposed investment met the requirements of Her Majesty's Revenue & Customs ('HMRC') in being capable of inclusion as an asset in a SIPP. This verification was concluded satisfactorily.
- It is also standard practice for Dentons to carefully review circumstances whereby a particular IFA might seek to require SIPPs to be opened for multiple, unconnected, clients. Such activity could be indicative of potentially fraudulent activity - or 'Pension Busting' activity. There were no indications that the actions of GBFS caused concerns.

Dentons added that at the time of the investment there were no circumstances publicly available to indicate any concerns with the GBFS, the DFM and the initial publicly quoted company into which the investment was made. It said it should also be noted that the FCA accepts that a SIPP provider is not required to verify or 'test' the suitability of a particular investment for a client. This is the role of an IFA giving advice or, the client themselves, in the case of someone acting on their own volition.

Dentons also referred to the High Court judgement in the case of *Adams v Carey Pensions* in which it was determined that the SIPP provider (i.e. Carey Pensions) was not responsible for advice given to the Plaintiff. It said it was its view that there is little or no difference in the circumstances present in Mr S's complaint and Dentons should not be considered to be answerable in any way for the complaint being pursued by his representative.

In 2021, Mr S's representative informed the Investigator that it understood the FSCS was accepting claims against SVS, and said Mr S intended to pursue a claim against SVS. As such, the Investigator told the representative that complaint against Dentons should be withdrawn, on the basis that Mr S intended to pursue his remaining pension loss through the FSCS against SVS. Dentons was subsequently informed the case had been withdrawn.

Mr S received a decision letter from the FSCS in January 2024. It said it was unable to accept his claim, as follows:

"…It appears these funds were placed with the Discretionary Fund Manager (DFM), Independent Portfolio Managers Limited trading as Smile Global Management (Smile), who invested in a variety of different assets using the SVS Securities Plc investment platform.

Your SVS Securities application included a Power of Attorney document that allows Smile to make investments with SVS Securities on your behalf. The SVS Securities transaction history shows fees being paid to Smile.

On this basis, we cannot see any evidence of negligence by the Firm so we are unable to uphold your complaint. The Firm does not appear to have acted as a Discretionary Fund Manager and it does not appear to have had any input in the investment selection. It appears it was only acting as an investment platform and simply arranged the purchase of the investments it was instructed to do so."

The FSCS said that IPM were no longer trading, and while it was accepting claims against this business, it noted Mr S had made a complaint about Dentons. It said Dentons are authorised and solvent and can therefore meet claims for compensation. As such the FSCS could not consider a claim against another firm at this time. This was because the FSCS is a fund of last resort so the complaint process had to be finalised against Dentons in the first instance.

Mr S therefore asked the Financial Ombudsman Service to reopen his complaint about Dentons. Dentons initially questioned on what basis the complaint had been reopened, but ultimately accepted this and provided additional information about the complaint.

Dentons provided the following information about the due diligence checks it had carried out on GBFS:

- GBFS first introduced business to it in May 2014.
- Dentons does not enter into introducer agreements with introducers of new business or financial advisers. It doesn't pay introducer commission or fees to IFAs.
- Before accepting GBFS as an introducer, Dentons checked that it was authorised by the FCA and that the firm had the required permissions.
- It understood Mr S had received regulated financial advice to consolidate and invest his pensions through regulated funds and subsequently opened an account with SVS, which was also regulated by the FCA, with a view to investing in the London Stock Exchange ('LSE').
- It didn't have any further discussions with GBFS about its client process or the business it was referring. All new business is considered on a case-by-case basis and advisers are checked periodically against the FCA register to ensure permissions remain with no adverse reports.
- It didn't pay any adviser fees to GBFS through Mr S's SIPP.
- It didn't request any suitability reports as the suitability of the investment advice is between the client, investment manager and the adviser.
- It only received two introductions from GBFS, including Mr S, who was the first introduction.
- Neither of the applications involved transfers from DB pension schemes and neither of the customers invested in non-mainstream investments.

Dentons said the following about the questions the Investigator had asked about the due diligence checks performed on the investments:

"The investments purchased were shares in quoted companies, which traded daily on regulated venues under the advice of a regulated investment manager firm. All of the investments were listed on the LSE.

Furthermore, the majority of the investments made within the portfolio remain listed to the present day. The FCA regulated investment manager who was a member of the LSE, was

appointed under the advice of a regulated financial adviser firm. Accordingly, Dentons' due diligence extended to ensuring that both the advisor and the investment manager were regulated by an appropriate body, which they were, and to ensure they invested in line with our permitted investments, which they did. All the investments made were standard investments as per the FCA's definition, being stocks and shares frequently traded on the LSE. The investment strategy – acquiring direct equities – will have been agreed between the investment manager and [Mr S] *and his advisers at that time."*

It said it didn't conduct independent reviews of the investments because they were all quoted shares listed on the LSE, but said all portfolios are monitored quarterly to ensure that fund managers do not deviate into non-standard investments.

After considering all of the information provided, our Investigator upheld the complaint. She noted Dentons had carried out some checks on GBFS but thought it ought to have done more, such as understanding its business model. She thought it ought to have entered into an agreement with GBFS and requested a copy of the suitability report issued to Mr S. Had it done so, she thought Dentons would've noted a conflict between the investments to be placed for Mr S – detailed on his SVS application – and his attitude to risk, and that GBFS hadn't given advice on the investments at all. The Investigator also thought the DFM arrangement was complex, and overall, thought it posed a risk of detriment to Mr S. She said Dentons ought to have queried Mr S's understanding of things.

The Investigator recognised that the investments placed for Mr S were listed shares traded on a recognised stock exchange, but IPM had invested a significant proportion of Mr S's funds in high risk shares. And she thought this also posed a high risk of detriment to Mr S and ought to have been queried. Ultimately the Investigator thought Dentons ought to have refused to accept Mr S's SIPP application form, so recommended he be compensated on the basis of him having remained invested in his previous pension plans. She also recommended it pay him £100 for the distress and inconvenience caused.

Dentons didn't accept the Investigator's opinion, saying it carried out reasonable due diligence checks on GBFS, and the DFMs involved, as per it's earlier representations. It maintained there were no grounds on which it ought reasonably to have refused the SIPP or investment applications.

Dentons said that Mr S's adviser was responsible for the advice to transfer his pensions to a SIPP and invest via a DFM. And Mr S had signed the POA giving IPM the authority to make investments on his behalf. It said this wasn't a complex arrangement, contrary to what the Investigator said in her view, it was standard practice where a customer appoints a DFM to make investment decision on their behalf. It added that it wouldn't have known SVS were going to be using IPM as the DFM but Mr S must have been aware of this given he signed the POA. It said it was acceptable for Dentons to accept the investments within the SIPP and it understood GBFS had advised him on this. It added that the SIPP application and investment processes were separate, and carried out by unconnected and independent body corporates, so Dentons would not know in advance of opening a SIPP account what the intended investments were. Ultimately it considered GBFS or IPM to be responsible if Mr S had suffered losses.

The Investigator wasn't persuaded to change her opinion so the complaint was referred to me to make a final decision.

I asked Dentons for some additional information about the investments it permitted in its SIPP at the time Mr S's SIPP was opened. I also asked it to confirm whether it permitted any investments that would be considered as 'non-standard' at the time.

Dentons said some non–standard investments would have been permitted at that time – direct holdings of unquoted UK company shares, for example – but only following Dentons' review and subsequent approval. It provided a copy of its permitted investments list, and a copy of the key features document which also included information about the types of investment it permitted.

The key features document, dated February 2014, stated:

"We will consider all investments permitted by HMRC. Investments that we do not allow include:

- *individual unquoted equities for overseas companies*
- *residential property*
- *off plan hotel developments*
- *carbon credits and cloud lending*

Where we have not previously approved an investment, we will investigate the individual asset or investment to ensure it will not be subject to tax charges."

I issued a provisional decision on 11 November 2024 explaining that I was minded to uphold the complaint. I said I didn't think it was unreasonable for Dentons to accept Mr S's SIPP application from GBFS and the transfer in of his existing pensions. But I thought that Dentons was aware of, or should have identified, potential risks of consumer detriment associated with business introduced by GBFS before it accepted Mr S's application to invest via IPM/SVS. And had it done so, it ought to have refused to accept the investment applications received for Mr S and he wouldn't have invested as he did or suffered the associated losses. So, I thought Dentons should compensate Mr S based on him having invested his funds differently. I recommended it also pay him £300 for the distress and inconvenience caused.

Mr S accepted my provisional decision. Dentons didn't accept it and made the following points:

- It had noted the different approaches taken by the Investigator and Ombudsman and the difference in findings in respect of the introducer and investment due diligence. It is irrational that the Investigator and Ombudsman cannot agree on the course of action.
- In any event, both approaches are wrong because it is not the responsibility of the SIPP provider to test the suitability of investments to be held in a SIPP.
- In a decision issued by an Ombudsman on a similar case, the Ombudsman confirmed this approach, saying that the SIPP operator had no obligation to give advice to the customer or ensure the suitability of the pension or investment for them.
- I had found that it was reasonable for Dentons to open the SIPP for Mr S, and so it was unreasonable to uphold the complaint as its obligations effectively ended there.
- In *Options UK Personal Pensions LLP v Financial Ombudsman Service* [2024] EWCA Civ 541, the judge held that the Ombudsman had to explain their reasoning such that the decision could be understood.
- I had misinterpreted the purpose of the Financial Planning Report – this report was not intended to cover the suitability of the investments proposed for Mr S, only the suitability of the pension transfer.
- The suitability of investments report would be prepared once the funds had been transferred in and were available for investment. This is reflected in the report which says, *"we have not yet provided any advice on the investment content of your SIPP*

this will be provided on completion of the transfer." This was permitted in line with the FCA's 2014 alert and it is not Denton's fault if GBFS failed to do this.

- There is no evidence to demonstrate that GBFS was not going to be offering Mr S any investment advice – this is an assumption only. Mr S was invited to contact GBFS further if anything in the report wasn't representative of his actual situation.
- The Regulator's alerts issued in 2013 and 2014 were aimed at firms providing financial advice. At no point do the alerts say that a SIPP provider will be held responsible if advice is given contrary to the guidance in the alerts.
- GBFS's Financial Planning Report is not connected to or relevant to the SIPP application – Dentons is free to accept or reject the SIPP application.
- The application form is a means by which Dentons tests the knowledge, understanding and capacity for loss by a potential client; to ascertain that they are fully conversant and informed regarding the financial objectives that they seek to achieve.
- Dentons asserts that it is entirely acceptable that it should rely upon the contents and declaration contained therein as the client's knowledge understanding and capacity for loss, as part of Dentons ongoing due diligence in line with Principle 2.
- Dentons disputes that it should have identified any potential for consumer detriment based on the content of the Financial Planning Report.
- Mr S hasn't explained why he signed the application forms for Firm V or SVS. Why would he sign them if he hadn't been advised by GBFS to do so?
- Mr S made data subject access requests in the past and has used the services of a claims management company. This demonstrates Mr S is capable of providing instructions to financial/legal services providers, so it can be inferred that he would've understood what he was doing when he applied for the SIPP and investment accounts. To say otherwise is infantilising him.
- It is more appropriate for Mr S to reclaim his loss from SVS – the loss Mr S experienced was due to poor advice and poor investment strategies by SVS as his appointed DFM.

If Mr S paid the compensation he received into another SIPP and invested the monies, the true value of this must be taken into account and offset against the compensation to be calculated.

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 done so, I'm still upholding the complaint. I note Dentons comments about my decision and reasoning differing to the Investigator's. But my decision is based upon my view of the facts in this case and the relevant law and regulations, Regulator's rules, guidance and standards, codes of practice and, where appropriate, what I consider to have been good industry practice at the relevant time.

I'm also mindful of Dentons comments about *Options UK Personal Pensions LLP v Financial Ombudsman Service* [2024] EWCA Civ 541. Dentons said the judge held that the Ombudsman had to explain their reasoning such that the decision could be understood, otherwise the decision could be open to challenge by way of judicial review on the grounds of perversity and/or irrationality. While Dentons may not agree with the decision I've reached, I'm satisfied that I have given reasons as to why I've upheld this complaint throughout my decision.

In deciding what's fair and reasonable in the circumstances, it's appropriate to take an inquisitorial approach. And, ultimately, what I'll be looking at here is whether Dentons took reasonable care, acted with due diligence and treated Mr S fairly, in accordance with his best interests. And what I think is fair and reasonable in light of that. I think that a key issue in Mr S's complaint is whether it was fair and reasonable for Dentons to have accepted Mr S's SIPP business and the subsequent investment applications from the introducer in the first place.

Relevant considerations

In my view, the FCA's Principles for Businesses are of particular relevance. 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 – at the relevant date).

PRIN 1.1.9G at the relevant date stated that:

"Some of the other rules and guidance in the Handbook deal with the bearing of the Principles upon particular circumstances. However, since the Principles are also designed as a general statement of regulatory requirements applicable in new or unforeseen situations, and in situations in which there is no need for guidance, the appropriate regulator's other rules and guidance should not be viewed as exhausting the implications of the Principles themselves."

Principles 2, 3 and 6 provide:

"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've 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 requirements they cover. The general notion that the specific rules can exhaust the application of the Principles is inappropriate. It cannot be an error of law for the Principles to augment specific rules*."

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 *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 hadn't 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 s.228 of the 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've 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 decision on a complaint without taking the Principles into account in deciding what's 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 that I must take into account when deciding this complaint.

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 judgments when making this decision on Mr S's 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 judgment said 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 both judgments when making this decision on Mr S'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 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 had complied with the best interests rule on the facts of Mr Adams' case.

The Court of Appeal rejected Mr Adams' appeal against HHJ Dight's dismissal of the COBS claim, on the basis he 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 didn't 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 in *Adams v Options SIPP*, 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 paragraph 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 note there are significant differences between the breaches of COBS 2.1.1R alleged by Mr Adams (summarised in paragraph 120 of the Court of Appeal judgment) and the issues in Mr S's complaint. In particular, HHJ Dight considered the contractual relationship between the parties in the context of Mr Adams' pleaded breaches of COBS 2.1.1R that happened after the contract was entered into. And he wasn't asked to consider the question of due diligence before Options SIPP agreed to accept the investment into its SIPP.

The facts of Mr Adams' and Mr S's cases are also different. I make that point to highlight that there are factual differences between *Adams v Options SIPP* and Mr S's case. And I need to construe the duties Dentons owed to Mr S under COBS 2.1.1R in light of the specific facts of his case.

So, 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 S's case.

However, it's important to emphasise that I must determine this complaint by reference to what I think is 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; Regulator's rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time. There 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 advise Mr S on the SIPP and/or the underlying investments. Refusing to accept an application or investment isn't the same thing as advising Mr S on the merits of the SIPP and/or the underlying investments. But I am satisfied Dentons' obligations included deciding whether to accept an introduction from a firm and whether to accept particular investments into its SIPP. And I don't accept that it couldn't make such an assessment without straying into giving the member advice.

The regulatory publications

The FCA (and its predecessor, the FSA) issued a number of publications which reminded SIPP operators of their obligations and which 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. And I've set out material parts of the publications here, although I've considered them in their entirety.

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 clients 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 members 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

The introduction to the 2012 Thematic Review Report explains that it was undertaken to investigate concerns that the regulator had about poor firm conduct and the potential for significant consumer detriment, and to determine the extent to which SIPP operators had adapted processes and procedures to reduce risks following the 2009 Report. The Regulator stated in the introduction that the findings of the review confirmed its concerns. The 2012 Report states that all SIPP operators should review their business in light of the contents of the report.

Findings from the review included:

- Inadequate risk identification processes and risk mitigation planning underpinned by poor quality management information ('MI').
- An increase in the number of non-standard investments held by some SIPP operators, with often poor monitoring of this.
- A lack of evidence of adequate due diligence being undertaken for introducers and investments.

The Report stated that:

"In our 2009 report we identified that there was a relatively widespread misunderstanding among SIPP operators that they bear little or no responsibility for the quality of the SIPP business that they administer, as this is the responsibility of clients and client's advisers…

As we stated in 2009, we are very clear that SIPP operators, regardless of whether they provide advice, are bound by Principle 6 of the Principles for Business: a firm must pay due regard to the interests of its customers and treat them fairly', in so far as they are obliged to ensure the fair treatment of their members."

And, under the heading *"Non-standard investments, due diligence and financial crime"* the Report stated that:

"Some SIPP operators were unable to demonstrate that they are conducting adequate due diligence on the investments held by their members or the introducers who use their schemes, to identify potential risks to their members or to the firms itself."

The review set out the regulator's expectation that SIPP operators review their business, paying particular attention to, amongst other things:

- Whether their risk identification and risk mitigation planning was sufficiently robust to ensure that the firm has safeguarded its customer's interests.
- The level of non-standard investments held within their schemes.

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

"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."

Under the heading *"Management Information (MI)"* the finalised SIPP operator guidance stated that:

"Principle 6 of the FCA's Principles for Businesses requires all firms to pay due regard to the interest of its customers and treat them fairly. SIPP operators are not responsible for the SIPP advice given by third parties such as financial advisers. We would expect SIPP operators to have procedures and controls in place that enable them to gather and analyse MI that will enable them to identify possible instances of financial crime and consumer detriment."

The guidance goes on to give examples of MI firms should consider which includes:

- Collection of MI to identify trends in the business submitted by introducers.
- The ability to identify the number of investments, the nature of those investments, the amount of funds under management, spread of introducers and the percentage of higher risk or non-standard investments.

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 un-authorised 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*** [bold my emphasis]***.***

- *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*** [bold my emphasis]

- *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 non-regulated 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. In the letter the FCA said that in a Thematic Review it had recently conducted it had focused on the due diligence procedures SIPP operators used to assess non-standard investments, and how well firms were adhering to the relevant prudential rules.

I acknowledge that the 2009 and 2012 Thematic Review Reports and the *"Dear CEO"* letter aren't formal guidance (whereas the 2013 finalised guidance is). However, I'm of the view that the fact that the reports and *"Dear CEO"* letter didn't constitute formal guidance doesn't 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's treating its customers fairly and produce the outcomes envisaged by the Principles. In that respect, the publications which set out the Regulators' expectations of what SIPP operators should be doing also go some way to indicate what I consider amounts to good industry practice, and I'm therefore satisfied it's appropriate to take them into account.

It's 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.

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'm therefore satisfied it's appropriate to take them into account too.

It's 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 Regulators' comments suggest some industry participants' understanding of how the good practice standards shaped what was expected of SIPP operators changed over time, it's clear the standards themselves hadn't changed.

I'm 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's fair and reasonable, I'll only consider Dentons's actions with these documents in mind. The reports, *"Dear CEO"* letter and guidance gave non-exhaustive examples of good practice. They didn't 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.

The publications make frequent reference to introducers but not execution-only stockbrokers or discretionary investment managers. However, given the non-exhaustive nature of the guidance and its purpose to make clear to non-advisory SIPP operators that they have a responsibility for the quality of the SIPP business they administer, I'm satisfied that the points made could be borne in mind in relation to other businesses SIPP operators deal with such as execution-only stockbrokers and discretionary investment managers.

The Regulator also issued an alert in January 2013 about advisers giving advice to consumers on SIPPs without consideration of the underlying investment to be held in the SIPP. The alert *("Advising on pension transfers with a view to investing pension monies into unregulated products through a SIPP"*) set out that this type of restricted advice didn't meet regulatory requirements. It said:

"It has been brought to the FSA's attention that some financial advisers are giving advice to customers on pension transfers or pension switches without assessing the advantages and disadvantages of investments proposed to be held within the new pension. In particular, we have seen financial advisers moving customers' retirement savings to self-invested personal pensions (SIPPs) that invest wholly or primarily in high risk, often highly illiquid unregulated investments (some which may be in Unregulated Collective Investment Schemes).
…
Financial advisers using this advice model are under the mistaken impression that this process means they do not have to consider the unregulated investment as part of their advice to invest in the SIPP and that they only need to consider the suitability of the SIPP in the abstract. This is incorrect.

The FSA's view is that the provision of suitable advice generally requires consideration of the other investments held by the customer or, when advice is given on a product which is a vehicle for investment in other products (such as SIPPs and other wrappers), consideration of the suitability of the overall proposition, that is, the wrapper and the expected underlying investments in unregulated schemes."

The Regulator issued a further alert, published on 28 April 2014, which stated:

"Where a financial adviser recommends a SIPP knowing that the customer will transfer or switch from a current pension arrangement to release funds to invest through a SIPP, then the suitability of the underlying investment must form part of the advice given to the customer. If the underlying investment is not suitable (…), then the overall advice is not suitable.

If a firm does not fully understand the underlying investment proposition intended to be held within a SIPP, then it should not offer advice on the pension transfer (…) at all as it will not be able to assess suitability of the transaction as a whole."

Like the publications set out above in relation to SIPP providers, I think these alerts are relevant considerations in this case in deciding what is fair and reasonable and what amounted to good industry practice at the time.

I also don't say the Principles or the publications obliged Dentons to ensure the transactions were suitable for Mr S. It is accepted Dentons wasn't required to give advice to Mr S, and couldn't give advice. And I accept the publications don't 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. And so it's fair and reasonable for me to take them into account when deciding this complaint.

I'm making a decision on what's fair and reasonable in the circumstances of this complaint – and for all the reasons I've set out above I'm satisfied that the Principles and the publications listed above are relevant considerations to that decision. And 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 GBFS/the business GBFS was introducing and undertaken sufficient due diligence into the investments it intended to make *before* deciding to accept Mr S's applications.

Ultimately, what I'll be looking at is whether Dentons took reasonable care, acted with due diligence and treated Mr S 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 S's complaint is whether it was fair and reasonable for Dentons to have accepted Mr S's applications in the first place. So, I need to consider whether Dentons carried out appropriate due diligence checks before deciding to accept Mr S's applications.

And the questions I need to consider are whether Dentons ought to, acting fairly and reasonably to meet its regulatory obligations and good industry practice, have identified that consumers introduced by GBFS were being put at significant risk of detriment. And, if so, whether Dentons should therefore not have accepted Mr S's applications for the Dentons SIPP and/or the applications for the investment account opened with SVS.

The contract between Dentons and Mr S

This decision is made on the understanding that Dentons acted purely as a SIPP operator. I don't say Dentons should have given advice to Mr S or otherwise have ensured the suitability of the SIPP or the investments for him. I accept that Dentons made it clear to Mr S that although it was authorised to do so, it wasn't giving him advice on his investments and he should seek advice on investments he proposed to make. And that the application declaration Mr S signed confirmed, amongst other things, that Dentons was not responsible for the performance of the investments he chose.

I've not overlooked or discounted the basis on which Dentons was appointed. And my decision on what's fair and reasonable in the circumstances of Mr S's case is made with all of this in mind. So, I've proceeded on the understanding that Dentons wasn't obliged to give advice to Mr S on the suitability of the SIPP, using IPM or SVS as the investment manager or the subsequent investments.

What did Dentons's obligations mean in practice?

In this case, the business Dentons was conducting was its operation of SIPPs. And I'm satisfied that, to meet its regulatory obligations, when conducting its operation of SIPPs business, Dentons had to decide whether to accept or reject particular investments and/or referrals of business with the Principles in mind.

The Regulators' reports and guidance provided some examples of good practice observed by the FSA and FCA during its work with SIPP operators. This included being satisfied that a particular introducer is appropriate to deal with and that a particular investment is appropriate to accept. That involves conducting checks – due diligence – on introducers and investments (as well as investment managers) to make informed decisions about accepting business. This obligation was a continuing one.

As set out above, to comply with the Principles, Dentons needed to conduct its business with due skill, care and diligence; organise and control its affairs responsibly and effectively; and pay due regard to the interests of its clients (including Mr S) and treat them fairly. Its obligations and duties in this respect weren't prescriptive and depended on the nature of the circumstances, information and events on an ongoing basis.

It appears Dentons was aware it had due diligence obligations to some extent at the time. Although it didn't enter into an agreement with GBFS, IPM or SVS, Dentons said it carried out checks on GBFS's regulatory status. And it said it checked that the investments IPM went on to make were permitted by HMRC and were on its permitted investment list.

But as I've set out above, the Regulator had put out a significant amount of guidance pertaining to SIPP Operator obligations before Mr S's introduction in April 2014. So, and well before the time of Mr S's application, I think that Dentons ought to have understood that its obligations meant that it had a responsibility to carry out appropriate checks on GBFS to check the quality of the business it was introducing.

And I think Dentons also ought to have understood that its obligations meant that it had a responsibility to carry out appropriate due diligence on investments to be held/being held in its SIPPs. So, I'm satisfied that, to meet its regulatory obligations when conducting its business, Dentons was also required to consider whether to accept or reject a particular investment with the Principles in mind.

Further, I think Dentons should have carried out appropriate due diligence on IPM. And in my opinion, Dentons should have used the knowledge it gained from its due diligence to

decide whether to accept or reject any application that involved a request to involve IPM as the investment manager.

Dentons's due diligence on GBFS

Dentons has said it only accepts business from advisory firms which are authorised and regulated by the FCA. As such, it was acceptable for it to have accepted Mr S's SIPP application from GBFS because GBFS was authorised and regulated by the FCA. Dentons said it understood GBFS had advised Mr S on the SIPP and the subsequent investments, although the investment instructions were received after the SIPP was established. Dentons added that there wasn't any information in the public domain at the time about GBFS that ought to have given it any cause for concern about accepting business from it.

From the information that has been provided, it appears that Dentons did take *some* steps towards meeting its regulatory obligations and good industry practice. However, I don't think those steps that we've seen evidence of went far enough, or were sufficient, to meet Dentons's regulatory obligations and good industry practice.

As I'll go on to explain, while I don't think it was unreasonable for Dentons to have accepted Mr S's SIPP application form and the subsequent transfer of his pensions, I think Dentons was aware of, or should have identified, potential risks of consumer detriment associated with business introduced by GBFS *before* it accepted Mr S's application to invest via IPM/SVS.

Did Dentons act fairly and reasonably in accepting Mr S's SIPP application from GBFS at the time?

I note that Mr S's SIPP application was the first introduction Dentons received from GBFS. Dentons said it didn't ask GBFS to enter into an introducer agreement with it. It told us:

"Dentons had no expectations as to the number of introductions that we would receive from [GBFS]. *We did not have any discussions with any or all of the persons connected or employed by* [GBFS] *about the number of introductions they would make. We consider all new business on a case-by-case basis.*

There was no discussion with them about their client processes or the business they were referring, as the number of introductions was not material in the context of Dentons overall business. Dentons continued to investigate the Financial Services Register to check their authorised status and any warning notices post establishment of [Mr S's] *SIPP as part of ongoing due diligence."*

However, it said that as part of its checks it gave specific instructions that only standard investments, such as those listed on a recognised exchange, were to be held unless Denton's specific agreement was obtained to alternatives (which would have been subject to internal due diligence).

At the time, GBFS was an established advisory firm, having been regulated since 1995 when the Personal Investment Authority was the Regulator. And it had the requisite permissions to undertake SIPP business such as this. So, although it would've been good practice for Dentons to have entered into an introducer agreement with GBFS, I think Dentons could take a degree of comfort from the longstanding nature of the business.

Mr S's SIPP application form showed that he wanted to transfer two relatively small personal pensions, but no investment details were provided. So, Dentons wouldn't have known how GBFS intended to invest Mr S's funds.

I wouldn't necessarily expect Dentons to have refused to accept the SIPP application on the basis that it didn't include details of the investment to be made for Mr S. But I think it would've been reasonable for Dentons to have asked further questions of GBFS before accepting the SIPP application form. I think that would've been in line with the expectations set out in the 2009 Thematic Review Report, which made clear that, *"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."*, and that SIPP operators were expected *"… 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."*

And given that this was a new relationship, I think it's reasonable to expect that Dentons should have been particularly cautious and asked GBFS questions, including about the kind of clients it would be introducing to Dentons, the expected nature of those clients' business, and how the quality and suitability of the advice it gave would be ensured. This would've been consistent with the guidance set out in the 2009 Thematic Review, which gave the following examples of good practice:

- *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.*

The October 2013 finalised SIPP operator guidance also set out the following example of good practice:

- *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.*

I think GBFS would've most likely explained that Mr S would be using a DFM to manage his funds in line with his attitude to risk. This is evidenced by the contact Dentons received from GBFS in May 2014, where GBFS emailed Dentons with details of the platform Mr S would be using, his risk profile and the charges applicable to the DFM. Using a DFM wasn't an unusual arrangement for a consumer investing their pension in a SIPP at the time, and the DFM would've had to be authorised and regulated by the FCA in its own right in order to arrange the investments for Mr S. So, I think this would've likely added another layer of comfort to Dentons, although, as I will go on to explain, I still would've expected Dentons to carry out further checks on the DFM before allowing it to invest Mr S's SIPP funds.

I'm also mindful that as Mr S's application was the first introduction Dentons received, there wasn't any other business from GBFS it could've monitored at the time which might have led it to further question the arrangements GBFS would go on to make for Mr S. And, there were no public adverse reports or notices about GBFS at the time.

For these reasons, I'm not persuaded that it was unfair or unreasonable for Dentons to accept Mr S's SIPP application from GBFS in the first instance. So, I think Mr S's SIPP would've been opened and his existing pensions would've been transferred into it regardless. Dentons said that this is effectively where its obligations ended, as it wasn't required to consider the suitability of the investments to be made for Mr S. But I don't think it would've been sufficient for Dentons to accept the SIPP application from GBFS without further scrutinising the subsequent investment applications it received. As I've said above, Dentons' due diligence obligations were continuous ones, and applied to DFMs as well as IFAs.

Was it fair and reasonable for Dentons to accept Mr S's investment applications from GBFS?

Dentons said that as far as it was aware, Mr S had been advised on the SIPP and the investments to be made with his pension monies. It says it was entitled to consider that GBFS would've provided Mr S with suitable advice, in line with its own regulatory requirements and that it was not required to request a copy of Mr S's suitability report. In any event, Dentons says that it doesn't have the expertise to question the suitability of the recommendation made by GBFS. However, I think that the paperwork and information Dentons received from GBFS following the SIPP being opened contained numerous anomalous features, such that it ought to have asked further questions.

In May 2014, following the establishment of the SIPP, Dentons was told by GBFS that Mr S had *"an attitude to risk rating of 5 (rated through Dynamic Planner), in other terms known as balanced."* And that he intended to use an Aviva platform and a DFM.

Dentons then received an application form from GBFS in June 2014 to open an account for Mr S with Firm V. In my view, the details contained within this application were anomalous, particularly given the information that had previously been provided about Mr S's attitude to risk, and ought to have been considered a 'red flag'.

The application form stated that Mr S earned under £50,000 and had cash/investments of under £50,000. So, Mr S was not a high earner and had limited savings. It also stated he had "rarely/never" traded FX, CFDs, Futures, Options or Securities such as shares and Bonds. It further stated Mr S did not have educational, professional qualifications or work experience that he considered allowed him to fully understand the risks of such of the products listed. So, it was evident from this information that Mr S was an inexperienced investor. However, the application went on to state that Mr S wished to trade in FX, CFDs, Equities and Futures with Firm V.

In response to my provisional decision Dentons said that the application form is a means by which it tests the knowledge, understanding and capacity for loss by a potential client; to ascertain that they are fully conversant and informed regarding the financial objectives that they seek to achieve. And it said it was entirely acceptable that it should rely upon the contents and declaration contained therein of Mr S's knowledge, understanding and capacity for loss. Although Dentons didn't specify which application form it was referring to here, it seems to me that it was most likely referring to the application form Mr S completed for Firm V (and later SVS). This is because the SIPP application form did not ask for or contain any details of Mr S's knowledge or understanding of financial products, whereas the applications for Firm V and SVS did contain this information.

Given that Dentons has said it was entitled to rely on the information contained in the application forms as part of its ongoing due diligence, I think it's clear that Dentons understood it had some responsibility to consider the information contained within the application forms. And I think that Dentons, as a SIPP operator, would've understood that trading in FX, CFDs and Futures with one's pension monies would be considered a very

high-risk strategy that wouldn't be suitable for most retail customers. And based on the application form, Mr S did not seem to have any experience with these types of investment, he did not appear to have much capacity for loss and Dentons had previously been told he had a balanced attitude to risk.

To be clear, I don't say that Dentons ought to have determined that the arrangement was unsuitable for Mr S, based on the information provided. Instead, I think Dentons ought to have been aware of some clear and obvious inconsistencies in the information it received about Mr S. And, given that the Regulator explained in its guidance that it expected SIPP operators to take reasonable steps to identify unsuitable SIPPs, I think Dentons ought reasonably to have been concerned about the information it had been provided and the potential for consumer detriment in this instance and asked further questions.

Again, I repeat that Dentons was not required to assess the suitability of the investment arrangements for Mr S. But I don't think it could ignore the anomalies presented to it in the circumstances here. The Regulator has made it clear that it may take enforcement action against a SIPP operator which fails to identify obvious potential instances of poor advice and as a result, does not safeguard their customers' best interests. In my view the arrangement, as presented, was anomalous, and as such it would've been reasonable for Dentons to ask further questions.

Dentons says that it was able to rely on the declarations Mr S signed confirming his understanding of things. I note that in the application form completed for Firm V, Mr S ticked a box to confirm that he understood the risks of the products and services Firm V provided and confirmed his acceptance of them. But I think that this was at odds with the information contained earlier in the form, where Mr S said that he essentially had no experience of trading in FX, CFDs, Futures, Options or Securities such as shares and Bonds and no other educational, professional or work experience that allowed him to fully understand the risks of those products. So, in the circumstances, I don't think it was reasonable for Dentons to rely on this declaration, particularly as it ought to have been alive to potential instances of poor advice.

Dentons said that this application didn't proceed so it couldn't have been expected to act on it. However, it's evident that this form was sent to Dentons, and it wasn't to know at the time that the account with Firm V would not proceed. So, Dentons still had an opportunity to act on the information contained within it. In any event, the application form for the account with SVS contained identical information. So, I would've expected Dentons to act on the information in the SVS application in the same way as I've set out above. And regardless of whether the account with Firm V was opened, Dentons was provided with information that I think would've caused any SIPP operator, acting in line with the Regulator's Principles and guidance, to question the quality of the business being introduced.

What fair and reasonable steps should Dentons have taken in the circumstances?

Given that Dentons had only received one introduction from GBFS at this point, I don't necessarily think it had enough evidence to conclude that the potential risk of consumer detriment from the business being introduced to it by GBFS was such that it should not continue to do business with GBFS at the outset. So, in the particular circumstances, I think Dentons should have taken fair and reasonable steps to address the potential risks of consumer detriment, such as those I've set out below.

Requesting information directly from GBFS

Given the potential risk of consumer detriment, I think that Dentons ought to have found out more about how GBFS was operating before it processed Mr S's investment application. And, mindful of the information contained within the application form, I think it's fair and reasonable to expect Dentons, in line with its regulatory obligations, to have made some specific enquiries and carried out independent checks.

As set out above, the 2009 Thematic Review Report explained that the Regulator would expect SIPP operators to have procedures and controls, and for management information to be gathered and analysed, so as to enable the identification of, amongst other things, *"consumer detriment such as unsuitable SIPPs".* Further, that this could then be addressed in an appropriate manner *"…for example by contacting the members to confirm the position, or by contacting the firm giving advice and asking for clarification."* It also gave the following example of good practice:

- *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.*

So, given the anomalies within the paperwork Dentons had received from GBFS, I think it would've been reasonable for Dentons to ask to see a copy of the suitability report issued to Mr S. Dentons says it didn't have to obtain this information from GBFS. But I think this was a fair and reasonable step to take, in the circumstances, to meet its regulatory obligations and good industry practice.

I note that Dentons disagrees with me referring to the Financial Planning Report as the suitability report. It says the report was only ever intended to cover the suitability of the pension transfer and says that a suitability of investments report would've been sent afterwards. But the Financial Planning Report is the only report I've seen in which GBFS provided advice to Mr S. This report was provided to us by Mr S and this is the only report he received. And it's evident that this report contains a recommendation that Mr S should switch his existing pensions to a SIPP, so I don't think it is unreasonable to refer to it as the suitability report.

If Dentons had asked to see a copy of the suitability report issued to Mr S, I think this ought to have raised further concerns about the quality of the business GBFS was introducing. I say this because the suitability report, dated 30 May 2014, contained further anomalies and highlighted concerning practices, such that Dentons ought to have concluded that business introduced by GBFS carried a high risk of consumer detriment.

The suitability report contained a summary of recommendations, which simply stated:

- *A transfer of your two Personal Pension [sic] with Aviva and AEGON to a Self-Invested Personal Pension (SIPP) with Dentons so that you are able to make your own investment decisions.*
- *You required a Pension that would give you the widest choice of investment including non-standard assets which include but are not limited to property, third party loans and unlisted shares.*

Further on in the report, Mr S's attitude to risk and capacity for loss was described as 'low-medium' or 5 on a scale of 1 to 10. It recorded he had two personal pensions with a value of around £55,000 and his only other investment was an off-shore bond with Aviva which had a value of just under £36,000.

In the section titled ‘Retirement Recommendation’, the report stated:

“As we have found, only specialist SIPP providers offer the facility to make non-standard investments available. We have considered several providers including Rowanmoor, Berkley Burke [sic]*, Alltrust and Dentons. We have selected Dentons in this instance because of the ease of access over investing in shares.”*

And under the subtitle, ‘Recommended Investments’ it stated:

“We have not yet provided any advice on the investment content of your SIPP this will be provided on completion of the transfer. Please note that we cannot provide advice on any direct shares or non-standard assets.”

As such, it is evident that no investment recommendation had been made to Mr S at this time.

Dentons says that its likely a further suitability report would’ve been issued covering the investments it was recommending, to say otherwise is an assumption. But based on the evidence I’ve seen, I think it’s reasonable to conclude that no investment advice was likely to be forthcoming. That’s because by this point GBFS had already told Dentons that Mr S would be investing via a DFM through Aviva. Dentons had then been given an application form to open an account with Firm V in order to invest in several high risk assets, signed by Mr S on 28 May 2014. All of this pre-dated the suitability report which was issued on 30 May 2014. If GBFS had in fact intended to give advice to Mr S on the investments he should make with his SIPP funds, then I think this would’ve been detailed in the report as it seems by this point, Mr S was already being directed to use a DFM to manage his funds. And I think that this ought to have raised serious concerns that GBFS was providing restricted advice, directly in contravention of the alert the Regulator issued in 2013 and the further alert issued only a month before on 28 April 2014.

Dentons said that providing advice on the pension switch first wasn’t inconsistent with the alerts. It said GBFS stated that advice on the investments would be given later on in the process once the funds had landed in the SIPP and were ready to invest. Dentons says that it couldn’t be held responsible if GBFS failed to do this, and in any event the alerts were aimed at advisers, not SIPP providers.

I accept that the alerts were aimed at advisers, but given the nature of its business and regulatory status, I’d expect Dentons to have been familiar with these alerts – even if they didn’t apply directly to it. That’s particularly the case given that the 2009 Thematic Review Report stated:

“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.”

And I don’t think Dentons could reasonably be able to identify possible instances of unsuitable SIPPs without being familiar with the regulatory framework, and supplementary alerts/guidance issued to help firms understand their obligations under the framework.

I also don't agree with Dentons view that giving advice on a pension transfer or switch in isolation of the investment recommendations is compatible with the alerts. The 2013 alert specifically said:

"…Financial advisers using this advice model are under the mistaken impression that this process means they do not have to consider the unregulated investment as part of their advice to invest in the SIPP and that they only need to consider the suitability of the SIPP in the abstract. This is incorrect.

The FSA's view is that the provision of suitable advice generally requires consideration of the other investments held by the customer or, when advice is given on a product which is a vehicle for investment in other products (such as SIPPs and other wrappers), consideration of the suitability of the overall proposition, that is, the wrapper and the expected underlying investments in unregulated schemes."

I accept that the alert here refers to an unregulated investment, but the alert was issued because of the rise in advice of this nature. And I still think it was made clear that considering the suitability of the SIPP in the abstract was not in line with regulatory requirements. Furthermore, the 2014 alert made it explicitly clear that this applied when any recommendation was made to transfer or switch pensions to a SIPP and the pensions monies went on to be invested. The alert said:

"Where a financial adviser recommends a SIPP knowing that the customer will transfer or switch from a current pension arrangement to release funds to invest through a SIPP, then the suitability of the underlying investment must form part of the advice given to the customer. If the underlying investment is not suitable (…), then the overall advice is not suitable.

If a firm does not fully understand the underlying investment proposition intended to be held within a SIPP, then it should not offer advice on the pension transfer (…) at all as it will not be able to assess suitability of the transaction as a whole."

The suitability report also indicated that Mr S was most interested in making non-standard investments and that Dentons had been recommended to meet that need. But GBFS specifically stated that it could not provide Mr S with advice on any non-standard assets. This was further evidence that the advice being provide to Mr S was of a restricted nature, given that GBFS had recommended the switch of Mr S's pensions to a SIPP in order to make non-standard investments but wasn't prepared to advise on any investment in non-standard assets. As I've highlighted above, the Regulator said advice to switch pension to a SIPP without advising on the suitability of how the SIPP was intended to be invested could not be suitable advice.

So, I'm still of the view that Dentons ought to have been aware that GBFS was not providing advice to customers in line with its regulatory obligations.

An investor with a low-medium or balanced attitude to risk and limited experience of investing, switching to a SIPP to invest their only pensions in non-standard assets, which are generally higher risk, was a further significant anomaly that ought to have been explored further.

Given the significant anomalies in the paperwork received, I don't think that further questioning of GBFS would've been an appropriate or sufficient step to take here. Asking GBFS whether it was giving Mr S restricted advice may not have elicited a useful response – I think it's evident from the suitability report that the advice on the pension switches had

already been given without any consideration of how the funds would go on to be invested and Mr S had subsequently been directed to a DFM.

Overall, I think there was already enough to be concerned about regarding the quality of the business being introduced by GBFS. And I think it would've been reasonable to conclude based on the paperwork alone that GBFS had given Mr S restricted advice, contrary to the Regulator's expectations, and this was a clear and obvious risk of consumer detriment. As such, I think it would've been fair and reasonable in the circumstances for Dentons to have refused the investment application for Mr S and refused to do further business with GBFS.

Alternatively, given the anomalies as a whole, Dentons could have carried out further independent checks before deciding how to proceed.

Making independent checks

The 2009 Thematic Review Report said that:

"…we would expect (SIPP operators) *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 members to confirm the position*** (my emphasis in bold)*, or by contacting the firm giving advice and asking for clarification."*

Given the potential risks of consumer detriment from the business introduced to Dentons by GBFS – which, upon receipt of the suitability report, I think should have been clear and obvious at the time – I think it would have been fair and reasonable for Dentons, to meet its regulatory obligations and good industry practice, to have taken independent steps to enhance its understanding of the introductions it was receiving from GBFS. And, given the various anomalies in the paperwork received from GBFS, I think it would have been fair and reasonable for Dentons to speak to Mr S directly.

And I think it's more likely than not that if Dentons had done this, Dentons would have been told by Mr S that GBFS hadn't given him any advice on how his pension funds would be invested. Although Mr S recalls being asked to sign application forms, he doesn't recall being told how the funds would ultimately be invested or an explanation of the DFM arrangement being put in place.

Dentons says that it was unreasonable to suggest that Mr S would've signed the application forms for Firm V or SVS without understanding why. But I don't think that's inconsistent with the way GBFS delivered its advice to Mr S – I think the documentary evidence demonstrates that Mr S was advised to switch his pensions to a SIPP without being given advice on how his funds would go on to be invested. I also don't think it's unreasonable that Mr S would've signed the forms in the absence of any related advice, given that he was using a regulated financial adviser and ultimately would've expected it to act in his best interests. Mr S was unexperienced in these matters, so I don't think he'd have necessarily known or understood what the 'usual' process was.

In any event, I think Dentons was aware of several inconsistencies in the paperwork provided. And if Dentons had queried the process followed with Mr S at the time, it would have come to light that Mr S hadn't been provided with full advice in respect of both the switch and the underlying investments. Furthermore, if it had queried the other consistencies such as Mr S's preference for investing in non-standard assets, or the high-risk assets mentioned on his DFM application form, I think it would've found that Mr S didn't understand

the implications of the course of action he was taking nor did he intend to or want to invest in high-risk assets.

Had it taken these fair and reasonable steps, what should Dentons have concluded?

As mentioned above, based on the paperwork GBFS provided alone I think Dentons should simply have concluded that, given the clear and obvious potential risks of consumer detriment, it should not continue to accept business from GBFS. I think that would have been a fair and reasonable conclusion for Dentons to have reached. But I also think it's more likely than not that if Dentons had undertaken *independent* checks into the business it had received from GBFS that such checks would only have served to further reinforce the clear and obvious risks of consumer detriment associated with introductions from GBFS. If Dentons had undertaken adequate independent checks I think it's more likely than not that it would have identified, that:

- GBFS was advising customers to switch their pensions to a SIPP before advising on how their funds should be invested within the SIPP.
- GBFS was arranging accounts with DFMs to manage client pension monies without advising on whether this was a suitable arrangement for them.
- There was a risk that GBFS was not providing the chosen DFMs with details of their client's attitude to risk, putting them at risk of the DFM managing their funds outside of their risk profile.

Any of these points would have been significant in isolation and should have further demonstrated that there was a significant risk of consumer detriment associated with introductions from GBFS.

I think Dentons ought to have viewed these issues as a significant cause for concern which raised serious questions about the motivation and competency of GBFS. And if Dentons had undertaken adequate initial and ongoing due diligence into GBFS and the business being received from it, I think Dentons should have concluded, and *before* it accepted Mr S's SVS application from GBFS, that it shouldn't continue to accept introductions from GBFS.
I therefore conclude that it's fair and reasonable in the circumstances to say that Dentons shouldn't have accepted Mr S's application to invest through SVS from GBFS.

In my view, Dentons didn't act with due skill, care and diligence, organise and control its affairs responsibly, or treat Mr S fairly by accepting his SVS application from GBFS. To my mind, Dentons didn't meet its obligations or good industry practice at the relevant time, and allowed Mr S to be put at significant risk of detriment as a result.

To be clear, I'm not saying here that Dentons should have been aware of, or identified, everything that has subsequently come to light about GBFS. I only say that, based on the information I think would have been available to Dentons at the relevant time had it undertaken adequate due diligence, it ought to have been apparent that there was a significant risk of consumer detriment associated with GBFS-introduced business. And that it's more likely than not that the *type* of independent checks it would have been fair and reasonable for Dentons to undertake in the circumstances would have revealed issues which were, in and of themselves, sufficient basis for Dentons to have declined to continue to accept introductions from GBFS before Dentons had accepted Mr S's investment application. Further, that it's the failure of Dentons's due diligence that's resulted in Mr S being treated unfairly and unreasonably.

Dentons's due diligence on the investments Mr S went on to make through SVS/IPM

In light of my conclusions about Denton's regulatory obligations to carry out sufficient due diligence on introducers, and given my finding that in the circumstances of this complaint Dentons failed to comply with these obligations, I've not considered Dentons' obligations under the Principles in respect of carrying out sufficient due diligence on the investments IPM ultimately made for Mr S. It's my view that had Dentons complied with its obligations under the Principles to carry out sufficient due diligence checks on GBFS and the business it was introducing, then this investment arrangement wouldn't have come about in the first place. So, I've not considered the due diligence checks Dentons carried out on the investments any further.

Is it fair to ask Dentons to pay Mr S compensation in the circumstances?

The involvement of other parties

In this decision I'm considering Mr S's complaint about Dentons. However, I accept that other parties were involved in the transactions complained about – including GBFS and IPM.

Dentons says that Mr S's loss is a direct result of the investments made by SVS and the FSCS is accepting claims against SVS where it acted as stockbroker, so Mr S should instead recover his loss via the FSCS. But as I've explained above, while Mr S had an investment account with SVS, IPM was providing the DFM service. And in any event, Mr S has already made a claim about SVS to the FSCS and it concluded that SVS had not played any role in the investments being made for Mr S.

Dentons may also say that it should not be liable for the full extent of Mr S's loss because of the involvement of these other businesses and to make no allowance for this in the redress is neither fair nor reasonable.

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 S fairly. The starting point, therefore, is that it would be fair to require Dentons to pay Mr S compensation for the loss he's suffered as a result of its failings.

I've carefully considered if there's any reason why it wouldn't be fair to ask Dentons to compensate Mr S for his loss.

I accept that other parties, including GBFS, might have some responsibility for initiating the course of action that led to Mr S'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 account wouldn't have been opened, the investments wouldn't have been made, and the loss he's suffered could have been avoided. So, I'm not asking Dentons to account for loss that goes beyond the consequences of its failings. Overall, it's my view that it's appropriate in the circumstances for Dentons to compensate Mr S to the full extent of the financial losses he's suffered due to Dentons's 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's liable to pay to Mr S.

Mr S taking responsibility for his own investment 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 S's actions mean he should bear the loss arising as a result of Dentons's failings.

In my view, if Dentons had acted in accordance with its regulatory obligations and good industry practice Mr S's investment account wouldn't have been opened. If that had happened, I'm satisfied the investments wouldn't have been made for Mr S in the first place, and the loss he's suffered could have been avoided.

GBFS was a regulated firm with the necessary permissions to advise Mr S on his pension provisions and Mr S also then used the services of a regulated personal pension provider in Dentons. I'm satisfied that in his dealings with these parties, Mr S trusted each of them to act in his best interests and in line with their respective regulatory obligations.

So, overall, I'm satisfied that in the circumstances, for all the reasons given, it's fair and reasonable to say Dentons should compensate Mr S for the loss he's suffered. I don't think it would be fair to say in the circumstances that Mr S should suffer the loss because he ultimately instructed the transactions be effected.

<u>Had Dentons declined to open Mr S's investment, would the transactions complained about still have been effected elsewhere?</u>

Based on the evidence I've seen, I still think Mr S's pension monies would've been transferred to Dentons. While I think that the advice Mr S received from GBFS was flawed, in that it was restricted without any consideration of how the funds would go on to be invested, I don't think Dentons would've known this if reasonable enquiries had been made at that stage in this particular case. As I've said above, I don't think it had reasonable grounds to refuse the introduction of Mr S's SIPP application from GBFS. So, Mr S's pension monies would've been transferred to the Dentons SIPP for investment regardless.

Dentons may say if it had refused to allow Mr S to open the investment account with SVS or do further business with GBFS, the investment account would still have been opened with a different SIPP provider. But I don't think that's likely to have happened here.

It's evident that Mr S's funds were transferred to Dentons, so if Dentons was no longer accepting business or instructions from GBFS, Mr S would've had to be informed about this by either GBFS or Dentons.

As I've said above, I think Dentons ought to have contacted Mr S when it received his SVS application and suitability report, which highlighted the inconsistencies and flaws in the advice process. But I wouldn't think it fair and reasonable to say that Dentons shouldn't compensate Mr S for his loss on the basis of any speculation that GBFS and/or Dentons wouldn't have confirmed to Mr S the reason why the investment application hadn't proceeded if asked by him.

Even if I was persuaded that Mr S wouldn't have been told the reason why his SVS application wasn't proceeding, I don't think he'd have likely chosen to remain with GBFS and transfer his SIPP monies elsewhere. Mr S would incur further fees doing this, and I'm not persuaded that Mr S's tie to GBFS was so strong that he would've chosen to do so. Mr S

has said he hadn't been told how his pension monies were going to be invested. And if Dentons had highlighted the inconsistencies within the investment application and suitability report to him, I don't think he would've likely felt comfortable continuing with GBFS.

In any event, I don't think it would be fair and reasonable to say that Dentons shouldn't compensate Mr S for his loss on the basis of speculation that another SIPP operator would have made the same mistakes as I've found it did. I think it's fair instead to assume that another SIPP provider would have complied with its regulatory obligations and good industry practice, and therefore wouldn't have accepted Mr S's application to invest via SVS.

In the circumstances, I'm satisfied it's fair and reasonable to conclude that if Dentons had declined to permit Mr S's investment account with SVS from being opened, the investments he went on to make wouldn't still have gone ahead and Mr S would have invested his pension funds differently.

In *Adams v Options SIPP*, the judge found that Mr Adams would have proceeded with the transaction regardless. HHJ Dight says (at paragraph 32):

"The Claimant knew that it was a high risk and speculative investment but nevertheless decided to proceed with it, because of the cash incentive."

But, I don't think these circumstances apply to Mr S. Mr S was not provided with an incentive; Mr S says he was cold-called and was simply advised to transfer his pensions to a Dentons SIPP. He wasn't previously interested in reviewing his pension or investing via a DFM. And, based on the evidence I've seen to date, I'm not satisfied that Mr S understood the investments that would be made for him or the risks involved in the transactions.

On balance, I'm satisfied that Mr S, unlike Mr Adams, wasn't eager to complete the transaction for reasons other than securing the best pension for himself. So, in my opinion, this case is very different from that of Mr Adams. And having carefully considered all of the circumstances, I'm satisfied it's fair and reasonable to conclude that if Dentons had refused to accept Mr S's SVS application from GBFS, the investment transactions this complaint concerns wouldn't still have gone ahead. That's because Mr S didn't seek out advice about his pension, he was cold-called by a business that introduced him to GBFS and wasn't otherwise interested in making changes to his pensions.

<u>The compensation Mr S received from the FSCS</u>

Dentons has said that Mr S received compensation from the FSCS and Mr S has had the opportunity to reinvest those funds. It says allowance should be made for the true value of the compensation he received and it should be allowed to consider whether Mr S has now already been fully compensated for his loss.

In my provisional decision I said:

"I acknowledge that Mr S has received a sum of compensation from the FSCS, and that he has had the use of the monies received from the FSCS. The terms of Mr S'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 S received from the FSCS. And it will be for Mr S 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 S 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."

So, I'm satisfied that I have already appropriately accounted for the compensation Mr S received from the FSCS in my decision, given that the terms of Mr S's reassignment of rights require him to return compensation paid by the FSCS in the event this complaint is successful.

Summary

Overall, I think it's fair and reasonable to direct Dentons to pay Mr S compensation in the circumstances. While I accept that other parties might have some responsibility for initiating the course of action that's led to Mr S's loss, I consider that Dentons failed to comply with its own regulatory obligations and didn't put a stop to the transactions proceeding by declining to accept Mr S's SVS application. I say this having given careful consideration to the *Adams v Options SIPP* judgments but also bearing in mind that my role is to reach a decision that's fair and reasonable in the circumstances of the case having taken account of all relevant considerations.

In making these findings, I've taken into account the potential contribution made by other parties to the losses suffered by Mr S. In my view, in considering what fair compensation looks like in this case, it's reasonable to make an award against Dentons that requires it to compensate Mr S for the full measure of his loss. But for Dentons's failings, I'm satisfied that Mr S's pension monies wouldn't have been invested by IPM through the SVS investment account.

As such, I'm not asking Dentons to account for loss that goes beyond the consequences of its failings. I'm satisfied those failings have caused the full extent of the loss in question. That other parties might also be responsible for that same loss is a distinct matter. However, that fact shouldn't impact on Mr S's right to fair compensation from Dentons for the full amount of his loss. As such, I'm of the opinion that it's appropriate and fair in the circumstances for Dentons to compensate Mr S to the full extent of the financial losses he's suffered due to its failings, and notwithstanding any failings by other firms involved in the transactions.

Putting things right

Fair compensation

My aim is to return Mr S to the position he would now be in but for Dentons' failure to carry out appropriate, ongoing due diligence checks on GBFS before accepting his SVS application.

As I've already mentioned above, while I think Mr S would've still transferred his existing pensions to Dentons, if Dentons had refused to accept Mr S's SVS application, I'm satisfied the investments would not have gone ahead and Mr S would've invested his transferred funds differently. It's not possible to say precisely what he would have done, but I'm satisfied that what I've set out below is fair and reasonable given Mr S's circumstances and objectives when he invested.

As I understand it, Mr S's remaining pension funds were transferred out of the SIPP on 18 January 2018 and the SIPP was closed. Dentons was asked to clarify the date on which Mr S's SIPP funds were transferred out in response to my provisional decision, but it hasn't responded to this point. Based on the evidence I've seen, I think Mr S's remaining funds were transferred out of the SIPP on 18 January 2018, so this is the "end date".

What must Dentons do?

To compensate Mr S fairly, Dentons must:

- Compare the performance of Mr S'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.

- Any calculated loss as at the date of transfer, which I understand was on 18 January 2018, must be brought up to date. To do this, Dentons must calculate what the current value of the loss figure would be if it had experienced a return equivalent to the FTSE UK Private Investors Income Total Return Index from 18 January 2018 through until the date of my final decision.

- If there is a loss, Dentons should (if Mr S still has a pension plan) pay into Mr S's pension plan to increase its value by the amount of the compensation. 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 a pension plan for Mr S, 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 S won't be able to reclaim any of the reduction after compensation is paid.

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

- It's reasonable to assume that Mr S is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr S would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

- Pay Mr S £300 for the distress caused by Dentons failing to stop the investments from going ahead. Although Mr S was able to recover some of the funds through SVS following it's liquidation, this was substantially less than the amount invested. I think this would've caused Mr S distress given the impact on his retirement plans.

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

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")
Dentons SIPP	No longer in force	FTSE UK Private Investors Income Total Return Index	Date of investment	Date ceased to be held – 18 January 2018

Actual value

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

Fair value

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

Any additional sum that Mr S paid into the investment should be added to the *fair value* calculation at the point it was actually paid in.

Any withdrawal from the portfolio should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if Dentons totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

I acknowledge that Mr S has received a sum of compensation from the FSCS, and that he has had the use of the monies received from the FSCS. The terms of Mr S'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 S received from the FSCS. And it will be for Mr S 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 S 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 deduction equivalent to the payment Mr S received from the FSCS following the claim about GBFS on the date the payment was actually paid to Mr S. Where such a deduction is made there must also be a corresponding notional addition at the date of my final decision equivalent to the FSCS payment notionally deducted earlier in the calculation.

Why is this remedy suitable?

I've chosen this method of compensation because:

- Mr S 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 S's circumstances and risk attitude.

My final decision

For the reasons set out above, I uphold Mr S's complaint.

I require Dentons Pension Management Limited to calculate and pay fair compensation to Mr S, as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 13 January 2025.

Hannah Wise
Ombudsman