DRN-5284116

The complaint

Miss C's complaint concerns a transfer to a self-invested personal pension (SIPP) provided by Dentons Pension Services (Dentons), and the investment made following that transfer. Miss C is represented by a Claims Management Company (CMC). The CMC says Dentons had a number of regulatory obligations and, had it taken sufficient steps to meet these obligations, ought to have concluded it should not allow the transfer and investment, as it exposed Miss C to significant risk, she had initially been contacted by an unregulated introducer, and she had not been made aware of the risks. The CMC says Miss C would not have gone ahead with the transfer, had Dentons not allowed it.

What happened

There were a number of parties involved in the events subject to complaint. I have set out a summary of each.

Omega Financial Solutions ("Omega")

Omega was authorised by the Financial Conduct Authority ("FCA") up until October 2019. It acted as Miss C's Independent Financial Advisor (IFA). I understand it had permission to give advice on investments and personal pensions at the time it provided advice to Miss C.

Shard Capital Partners LLP ("Shard")

Shard is regulated by the FCA. Amongst other things, it is authorised to act as an investment manager and to execute trades in listed securities for retail clients. It provided an investment platform for Miss C's SIPP (and, according to the contract note issued for the investment it made, managed the investments on that platform on a discretionary basis).

Sure Ventures PLC

Sure Ventures is an investment company, which is listed on London Stock Exchange (LSE). Its aim is to achieve a diversified exposure to early stage technology companies. It is an Alternative Investment Fund.

The investment rationale is currently described as follows:

"*Sure Ventures PLC has been established to enable Investors to gain access to early stage technology companies in the three exciting and expansive market verticals of Augmented Reality and Virtual Reality (AR/VR), the Internet of Things (IOT) and Financial Technologies (FinTech).*

The Company expects to gain access to deal flow ordinarily reserved for venture capital funds and ultra high net worth angel investors, establishing a diversified software-centric portfolio with a clear strategy. Listing the fund on the London Stock Exchange should offer investors:

- *Liquidity*

- *A quoted share price*

- *A high level of corporate governance.*

It is often too expensive, too risky and too labour intensive for investors to build a portfolio of this nature themselves. We are leveraging the diverse skillsets of an experienced management team who have the industry network to gain access to quality deal flow, the expertise to complete extensive due diligence in target markets and the entrepreneurial skills to help these companies mature successfully. Those investing in our fund will get exposure to Suir Valley Funds ICAV which in turn co-invests with Enterprise Ireland, one of the largest VC's in Europe."

Shard invested the majority of the money in Miss C's SIPP into Sure Ventures.

Miss C's dealings with the parties

I have set out below a timeline of what I consider to be the key events:

- 10 November 2017 - Miss C signed a Dentons SIPP application form. The application gave Shard's details under the "Investment Company/Fund Platform" section. The "Financial Advice" section confirmed she had been provided with advice by Omega.

- 10 November 2017 - Miss C completed a Shard Joint Account Opening Form (the joint applicants being Miss C and Dentons as the SIPP administrator). This form was only partly completed (the "Strategy and Risk Profile" section was left blank).

- 4 December 2017 - £176,706.75 was received into the SIPP from Miss C's previous pension. £44,176.68 of this was taken by Miss C as a tax-free cash payment.

- 19 January 2018 – Shard invested £128,690 in shares of Sure Ventures on Miss C's behalf. The contract note for the purchase confirms the purchase had been made on a discretionary basis.

Miss C made a claim to the Financial Services Compensation Scheme ("FSCS") about the advice she received from Omega. The FSCS accepted the claim, and calculated Miss C's loss at £87,543.71; in excess of the limit on the compensation it can pay. Accordingly, it paid Miss C compensation equal to that limit - £85,000.

Dentons' response to the complaint

Dentons did not uphold the complaint. It said, in summary:

- Miss C's transfer was from another SIPP, so she was replacing like with like.

- The application was submitted by an authorised IFA, which confirmed it had given advice.

- A SIPP member may trade using a trading account - assuming they are buying listed stocks or standard investments, and it is not for Dentons to consider whether an investment strategy is or is not suitable for the SIPP member.

- Sure Ventures was - and still is - listed on the LSE. It is traded regularly and is not impaired. In is a standard investment. When the Shard account was established it made it clear to Shard that only standard investments could be acquired without its prior consent, on Miss C's direct instructions. The purchase of the Sure Ventures

shares did not breach this.

- It cannot identify any breach of the COBS rules or the FCA's principles through its acceptance of this business.

- The shares were trading at a price higher than Miss C paid; she has hence not suffered a loss.

Our investigator's view

Our investigator concluded Miss C's complaint should not be upheld. Our investigator said, in summary:

- Dentons' policy was to only accept business from FCA authorised and regulated financial advisers.

- There was insufficient evidence to conclude that Dentons should have refused to accept the application submitted through Omega. There was no evidence that Dentons could or should have identified that Omega was involved in inappropriate or fraudulent activity. Dentons could be satisfied that Omega was not breaching any regulatory rules.

- She had not seen any evidence suggesting that Miss C received advice from an unregulated business about the transaction. It is specifically stated on the SIPP application form that Miss C's financial adviser is Omega. There was no basis on which Dentons would have known that an unregulated party was involved.

- It was Omega's role to assess if the investment was suitable for Miss C, not Dentons.

- It's important to highlight that the investment is listed on a recognised stock exchange –and was managed by an FCA regulated firm. Dentons was entitled to take a significant level of reassurance from these facts and that it is a genuine investment and not a scam or linked to any fraudulent activity.

- The investment appeared to be one that could be independently valued, and readily bought and sold. And, at the relevant date, she did not think a reasonable SIPP provider undertaking adequate due diligence would have had cause not to permit the investment into its SIPP.

The CMC's response to the view

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

- Dentons allowed the entirety of Miss C's pension fund to be invested in Sure Ventures.

- Sure Ventures' website says the investment was only ever intended for sophisticated and high net worth investors. Miss C does not fall within either of these categories. Had Dentons undertaken sufficient due diligence on the investment, they would have been alerted to the fact that Sure Ventures was not intended for retail clients such as Miss C and should have refused to facilitate the investment.

- There was no evidence presented to Dentons to suggest that Miss C was a high net

worth or sophisticated investor, or that she had any particular understanding of investments. She had no prior investment experience, and her pension provision was a significant proportion of her overall wealth.

- It is clear that Dentons failed to undertake sufficient or adequate due diligence on the intended investment. Had it done so, it would have been obvious that the intended investment was not suitable for Miss C, nor was it a "SIPPable" product.

- Miss C did receive advice from Omega, but confirms that she had no interest in seeking exposure to early stage technology companies, nor did she have any understanding of such investments. To be clear, Miss C's only objective was to ensure that her pension funds were protected, and were not exposed to any unnecessary level of risk.

- The investment is traded on the LSE, but is traded on the Specialist Funds Segment (SFS). The SFS is a dedicated segment, for specialist closed-end investment funds, targeting institutional, professional/ sophisticated and knowledgeable investors.

- Closed end investments are less likely to be liquid. Shard has told Miss C that Sure Ventures is an illiquid stock with a low level of trading day to day. Therefore, if Miss C wished to sell there will either be a big discount or no buyer.

- It maintains that in accepting Miss C's application and allowing the entirety of her pension funds to be invested in Sure Ventures, Dentons failed to comply with its regulatory obligations.

The CMC later said the investment had been sold for £91,305.39.

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.

Relevant considerations

I'm required to determine this complaint by reference to what I consider to be fair and reasonable in all the circumstances of the case. When considering what is fair and reasonable in the circumstances, I need to take account of 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 have taken into account a number of considerations including, but not limited to:

- The agreement between the parties.

- The Financial Services and Markets Act 2000 ("FSMA").

- Court decisions relating to SIPP operators, in particular Options UK Personal Pensions LLP v Financial Ombudsman Service Limited [2024] EWCA Civ 541 and the case law referred to in it including:

    - Adams v Options UK Personal Pensions LLP [2021] EWCA Civ 474

    - R (Berkeley Burke SIPP Administration) v Financial Ombudsman Service EWHC 2878

- Adams v Options SIPP UK LLP [2020] EWHC 1229 (Ch)

- The FSA and FCA rules including the following:
  - PRIN Principles for Business
  - COBS Conduct of Business Sourcebook
- Various regulatory publications relating to SIPP operators, and good industry practice.

The legal background:

As highlighted in the High Court decision in *Adams* the factual context is the starting point for considering the obligations the parties were under. In this case I am satisfied the contractual relationship between Dentons and Miss C is a non-advisory, or execution only, relationship.

Setting up and operating a SIPP is an activity that is regulated under FSMA. And pensions are subject to HMRC rules. Dentons was therefore subject to various obligations when offering and providing the service it agreed to provide – which in this case was a non-advisory service.

The case law:

I'm required to determine this complaint by reference to what is in my opinion fair and reasonable in all the circumstances. I am not required to determine the complaint in the same way as a court. A court considers a claim as defined in the formal pleadings and they will be based on legal causes of action. The Financial Ombudsman Service was set up with a wider scope which means complaints might be upheld, and compensation awarded, in circumstances where a court would not do the same.

The approach taken by the Financial Ombudsman Service in two similar (but not identical) complaints was challenged in judicial review proceedings in the *Berkeley Burke* and the *Options* cases. In both cases the approach taken by the ombudsman concerned was endorsed by the court. A number of different arguments have therefore been considered by the courts and may now reasonably be regarded as resolved.

It is not necessary for me to quote extensively here from the various court decisions.

The FCA rules

PRIN

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"* (see PRIN 1.1.2G). The Principles apply even when the regulated firm provides its services on a non-advisory basis, in a way appropriate to that relationship.

Principles 2, 3 and 6 are of particular relevance here. They 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 am satisfied that I am required to take the Principles into account (see *Berkley Burke*) even though a breach of the Principles does not give rise to a claim for damages at law (see *Options*).

COBS

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 is a relevant consideration here. However, the extent of the duty this imposes depends on the factual context. So, I've considered COBS 2.1.1R – alongside the remainder of the relevant considerations, and within the factual context of Miss C's case, including Dentons' role in the transactions.

The regulatory publications and good industry practice:

The regulator 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.

The 2009 Report included:

"We are concerned by a relatively widespread misunderstanding among SIPP operators that they bear little or no responsibility for the quality of the SIPP business that they administer, because advice is the responsibility of other parties, for example Independent Financial Advisers…

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."

The Report also included:

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."*

I have considered all of the above publications in their entirety. It is not necessary for me to quote more fully from the publications here.

The 2009 and 2012 Thematic Review Reports and the *"Dear CEO"* letter are not formal guidance (whereas the 2013 finalised guidance is). However all of the publications 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 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 (as did the ombudsman whose decision was upheld by the court in the *Berkeley Burke* case).

Points to note about the SIPP publications include:

- The Principles on which the comments made in the publications are based have existed throughout the period covered by this complaint.

- The comments made in the publications apply to SIPP operators that provide a non-advisory service.

- Neither court in the *Adams* case considered the publications in the context of deciding what was fair and reasonable in all the circumstances. As already mentioned, the court has a different approach and was deciding different issues.

- What should be done by the SIPP operator to meet the regulatory obligations on it will always depend upon the circumstances.

Having carefully considered the above, I have reached the same overall view as the investigator. I do not think it would be fair and reasonable to uphold Miss C's complaint. I have set out my findings below. Although, as set out above, there are a significant amount of relevant considerations here the issues in this case are, in my view, relatively straightforward. I have accordingly kept my findings brief.

As I mention above, Dentons was not acting in an advisory capacity. It was acting in an execution only capacity, as the administrator of Miss C's SIPP. Dentons did not therefore have any obligation to ensure the suitability of the transfer to the SIPP and investment made in it. But, considering the relevant regulatory obligations and standards of good practice set out above, Dentons should have carried out due diligence on the businesses involved which was consistent with those obligations and standards.

As a preliminary point, I think it is first important to establish the facts of this complaint. Dentons did not allow an investment in Sure Ventures, as such. Rather, it accepted a SIPP application introduced to it by Omega and an application to open an account with Shard. It was then Shard which executed the trade in Sure Ventures for Miss C's SIPP – and, according to the contract note, did so on a discretionary basis. So, insofar as Dentons' involvement is concerned, the question that primarily needs to be considered is therefore whether there was any reason it ought reasonably to have been aware of, following due diligence which was consistent with its regulatory obligations and standards of good practice, why it should not have accepted an application from Omega or an application to open an account with Shard. I have considered each in turn.

Omega

Dentons says where there is an introducer of business to it, the introducer must be authorised. And, in this case, it checked the introducer – Omega - was an FCA authorised business and the adviser held the appropriate permissions to provide the advice.

In the particular circumstances of this case, I am not persuaded that Dentons needed to do more than this, to meet its regulatory obligations. This was the second application Dentons had received from Omega and I have not seen any evidence show Dentons should reasonably aware Omega was proposing to introduce a type of business which might have a risk of consumer detriment associated with it. The application in this instance was to open a SIPP and open an account with Shard, a FCA authorised business, in order to access investments in listed securities. I do not think the application had any characteristics which ought to have reasonably led Dentons to treat it with caution.

In any event, in the circumstances of this complaint, I am not persuaded that any further due diligence – done to an extent which would reasonably meet Dentons's regulatory obligations and standards of good practice - would have given Dentons any reasonable basis to conclude it should not accept business from Omega.

Furthermore, as I set out below, I think Dentons could have taken comfort from Shard's FCA authorised status and took reasonable steps to ensure investments on the Shard account were restricted to standard assets (unless otherwise agreed by it).

Overall, I do not think there is sufficient evidence to say it is fair and reasonable to find Dentons should simply not have accepted Miss C's application from Shard.

For completeness I should also mention that, like the investigator, I have seen no evidence to show Dentons ought to have been aware an unregulated business had been involved. There is no mention of such a business in any of the documentation and I do not think, in the circumstances, it would be fair and reasonable to say Dentons should have enquired as to how Miss C had been introduced to Omega. So, I do not think the involvement of the unregulated business means it would be fair and reasonable to find Dentons should not have accepted the application.

Shard (and the Sure Ventures investment)

Miss C's application involved the money being transferred into the SIPP being paid into an account provided by Shard. In the circumstances of this particular complaint, I do not think Dentons should reasonably have identified that as being anomalous. Or reasonably identified that there was a risk of consumer detriment otherwise.

I agree with the CMC that the investment of almost the entire of Miss C's SIPP in Sure Ventures was highly unlikely to have been suitable for her. But I do not think that is a basis on which it would be fair and reasonable to uphold a complaint against Dentons.

If Dentons knew it was Shard's intention to invest in this way that may have been a basis on which it ought to have considered there was a risk of consumer detriment. But I have seen no evidence to show Dentons knew it was the intention of Shard to invest the whole account in Sure Ventures, or evidence to show there was a pattern of Shard accounts being invested in such a way previously (and therefore reason for Dentons to think there might be a risk of consumer detriment associated with Shard accounts generally).

So, as with the due diligence on Omega, I am not persuaded, in the particular circumstances of this case, that Dentons needed to do more than it did, to meet its regulatory obligations. The application to open the account with Shard did not, on the face of it, have any anomalous features and I am not persuaded Dentons should reasonably have concluded it was one it should treat with caution.

Dentons also gave instructions to Shard to ensure investments were made only made in standard assets (i.e. a standard asset as per IPRU-INV 5.9.1 R, which required the asset to fall into a defined category and be readily realisable within 30 days), unless otherwise agreed with it. I think that was a reasonable step to take, and I have not seen sufficient evidence to show the account was not subsequently invested in a way which was consistent with that. The shares were a listed security and it was reasonable to conclude they could be realised within 30 days. I note there was a normal market size of 2,500, which is not unusual for small cap stocks. But that is not, in my view, evidence the shares could not be realised at all within 30 days. And I note Miss C has been able to realise her investment. So, there is insufficient evidence to show Dentons' should have reasonably concluded Shard had breached the restriction to standard assets.

The CMC says Sure Ventures' website explains the investment was only ever intended for sophisticated and high net worth investors. However, the section of website quoted by the CMC says "*An investment in Sure Ventures Plc is designed to be suitable for…. professionally-advised private investors seeking exposure to early- stage technology companies.*" I do not agree that is a restriction on the distribution of the investment of the type the CMC describes. It is not, in my view, evidence the investment could only be promoted to sophisticated or high net worth clients, or that retail clients were excluded from receiving promotions of it. And it appears this was not, in any event, a promotion – it was an investment made at the discretion of an investment manager - Shard. I make this as a secondary point because, as mentioned, Dentons did not specifically accept an investment in Sure Ventures; rather, it was made by Shard on Miss C's behalf.

As noted above, the Shard application form was only partly completed and it is also, in my view, ambiguous about the service Shard would be offering Miss C. I think it would have been good practice for Dentons – assuming it did not do so – to check the nature of the service Shard would be providing to Miss C and whether the missing information, if needed, would be obtained by Shard either from Miss C direct or Omega. But I am not persuaded that the course of events would have changed had Dentons taken these steps (assuming it did not).

In summary, given my findings above, I do not think there is sufficient reason to say the

application should not have been accepted, or that Dentons should have taken different or additional steps when dealing with it which would have changed the course of events and therefore have potentially left Miss C in a better position than she is now.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 21 February 2025.

John Pattinson
Ombudsman