

## **The complaint**

Mr O's complaint concerns a transfer to a self-invested personal pension (SIPP) provided by Dentons Pension Services (Dentons), and one of the investments made following that transfer. Mr O 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 accept the business, as it should have recognised a SIPP and the investment concerned were not suitable for Mr O, and he did not have the capacity to understand the risks involved.

## **What happened**

Mr O was introduced to Dentons by a Financial Conduct Authority (FCA) authorised independent financial advisor (IFA) – Grosvenor Financial Consultants Ltd (GFC). He transferred various existing pensions into a Dentons SIPP, and subsequently made two investments – one a portfolio of standard assets, the other a loan to a property development, made to a company called Grosvenor Funding Solutions Ltd (GFS). GFC advised Mr O on the transfer and investments.

Mr O signed a Dentons SIPP application form in June 2017. The application gave the details of a large platform provider under the "Investment Company/Fund Platform" section. Mr O ticked "no" when asked if this would be his only investment and "yes" next to "loans to unconnected parties" under the list of other possible investments. The "Financial Advice" section confirmed he had been provided with advice by GFC. Mr O also completed a "SIPP Non Standard Investment Declaration", and a "SIPP loans to unconnected parties" form, which I understand were required by Dentons if a loan was to be made from the SIPP.

Mr O applied to transfer in four existing pensions, and took benefits from these as and when the transfers arrived in the SIPP. The final transfer did not complete until May 2018 and, by that point, no investments had been made in the SIPP. Investments were finally made in February and October 2019. The former was the loan to GFS, and is the focus of the complaint. In connection with this, Mr O completed a further, updated "SIPP Non Standard Investment Declaration", and "SIPP loans to unconnected parties" forms. The loan was intended to be for a 12 month term but Mr O's capital was not ultimately returned, and GFS later went into liquidation.

Mr O made a claim to the Financial Services Compensation Scheme ("FSCS") about the advice he received from GFC. The FSCS accepted the claim, and calculated Mr O's loss, at the time, to be £109,370.23 – in excess of the limit on compensation it could pay. It accordingly paid Mr O compensation equal to that limit (£85,000).

I understand a property owned by GFS was sold, following its liquidation, and distributions paid to GFS's creditors. In Mr O's case payment was made to the FSCS in the first instance, and £10,139.38 was then paid into his SIPP by the FSCS.

Dentons did not uphold Mr O's complaint. It said it was not responsible for ensuring the suitability of arrangements for Mr O, and had met its regulatory obligations.

Our investigator concluded the complaint should be upheld. He said introductions of

business from GFC should have been viewed as anomalous, given the volume and the level of non-standard assets involved. And that Dentons should have noted a conflict of interest between GFC and GFS. Overall, his view was that Dentons, had it taken adequate steps to meet its regulatory obligations, should not have accepted Mr O's SIPP application.

Dentons did not accept the investigator's view. It maintained it acted reasonably in accepting the application and allowing the loan; and said it did not think Mr O had suffered a loss, in any event.

### **My provisional findings**

I recently issued a provisional decision. I included a summary of what I thought were relevant considerations:

- 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.

And then set out my provisional findings as follows:

*"Having carefully considered the above (this refers to the relevant considerations summarised above), and what is fair and reasonable in the particular circumstances of this complaint, I do not think it would be fair and reasonable to uphold Mr O's complaint.*

*As I mention above, Dentons was not acting in an advisory capacity. It was acting in an execution only capacity, as the administrator of Mr O's SIPP. Dentons did not therefore have any obligation to ensure the suitability of the transfer to the SIPP and investments 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. I have therefore considered what such due diligence should have led Dentons to conclude about this business.*

*In terms of the due diligence on GFC, the investigator noted:*

- *Between 2014 and 2018 GFC introduced 12 clients to Dentons.*

- Six of these clients invested into non-mainstream investments, in a similar way to Mr O (part invested in the loan and part invested in standard investments on a platform).

*The investigator also made a finding that, had Dentons checked if GFC used any other SIPP providers, it would have found that GFC had introduced approximately 150 of its customers to invest large proportions, if not all, of the proceeds of their pensions into similar loans with other SIPP providers.*

*Having considered the above, I am not persuaded the volume and nature of the introductions to Dentons from GFC was, in itself, anomalous. GFC was only bringing a few applications a year to Dentons and they did not all feature loans to GFS; and those that did were only partly investing in loans to GFS. I am not therefore persuaded that Dentons should reasonably have concluded this was anomalous and there was therefore a risk of consumer detriment arising from the volume and nature of introductions from GFC.*

*In terms of GFC's wider business model, I think whether Dentons (had it been aware of the overall numbers) should have viewed around 150 consumers investing in loans as anomalous would depend on the length of time over which the business came about, and what portion of GFC's overall business that represented. That information is not available, as GFC is no longer trading; but I do not think it is certain that, if it was, a finding that Dentons should reasonably have concluded the business was anomalous would inevitably follow. It appears GFS was active from 2012; so, this business could have come about over several years.*

*Like the investigator, I think there was an identifiable clear conflict of interest. The DueDil report on GFS which Dentons says it had regard to when considering the loan notes the links between GFS and GFC, and a common director. And I have seen insufficient evidence to show Dentons could reasonably have concluded the conflict of interest had been appropriately managed. However, I think that, in itself, was reason for Dentons to question GFC, rather than refuse to accept the application outright, and I do not know how GFS would have responded to that; it may have been able to take appropriate steps to address the conflict.*

*I have not seen any other evidence to show that Dentons should have reasonably concluded it should not accept applications from GFS. So, overall, I think there is limited evidence to support a finding Dentons should not have accepted the initial introduction from GFS.*

*There is also, in my view, insufficient evidence to show a loan to GFS should not have been allowed at all. The company had been established for a number of years, and there is no suggestion it was not genuine. I think the lending was high risk but that, in itself, is not sufficient basis to say it simply should not have been allowed.*

*Dentons does appear to have largely relied on the DueDil report it obtained. And I think to meet its regulatory obligations and standards of good practice it should have asked further questions – but it is not possible to establish now what answers they would have yielded. And, as with the volumes of business point, I do not think it inevitable that further information should have led to the conclusion Dentons should simply not allow loans to GFS.*

*In short, I am not persuaded there is sufficient evidence to conclude it is fair and reasonable to uphold the complaint on the basis Dentons simply should not have accepted Mr O's application at the outset – either because it should have concluded it should not accept referrals of business from GFC or because it should have concluded it should not allow the loan.*

*There is, in any event, a further point here which leads me to the same overall conclusion even if I were to take a different view on whether Dentons should have accepted Mr O's application. Even if I were to conclude Dentons should not have accepted the initial application, I am not persuaded it would have led to a different outcome for Mr O. I think it more likely than not that Mr O would have proceeded with the application through another SIPP operator (and would have been able to do so) had it not been accepted by Dentons.*

*I say this because I am aware GFC was placing business with other SIPP operators and the available evidence shows Mr O either did not pay any attention to what Dentons said to him or, if he did, attached more weight to what he was told by the advisor. Meaning, in my view, Mr O would likely have done as advised by GFC which, in this case, had the application not been accepted by Dentons, would likely have been to proceed with another SIPP operator.*

*Denton's Non Standard Investment Declaration, which was signed by Mr O, listed 16 questions to which Mr O was required to give a yes or no answer. Mr O answered "yes" to all. The questions included whether Mr O understood he may not get any of the money invested back, was comfortable with the potentially high level of risk, was in a position to accept this risk, fully understood the nature of the investment, and was a sophisticated or high net worth investor. They also included confirmation of his understanding that there may be no regulatory protections and the investment may be illiquid.*

*After the complaint was referred to us we asked questions of Mr O and received answers as follows:*

***Can you describe what you can remember about the events leading up to the transfer to the SIPP. For example, who first contacted you and how? What can you remember about any conversations that took place?***

*"(GFC advisor) told me that I would have a much better performance by moving my pensions and loaning funds to the Raithwaite hotel (this was the development being funded by loans to GFS)"*

***What attracted you to the introducer? What attracted you to the investment?***

*"(GFC advisor) told me it was a safe low risk investment with a secured charge giving 9.5% return"*

***What role did you think the introducer had in this transaction?***

*"Grosvenor gave advice to move my pensions and make the investment in Raithwaite"*

***After the transfer into the SIPP was complete then your pension monies were invested. What was your understanding of the investment(s) that was made? And what was your understanding of how this investment(s) worked?***

*"I had very little understanding of the investment if I'm honest. I just received updates off (GFC advisor) and told it was receiving 9.5%."*

***What was your understanding of the risks associated with the investment? Please explain your answer fully.***

*"I was told it was a low risk safe investment."*

*So, what Mr O declared to Dentons conflicts significantly with what he says he understood from his advisor at GFC; and what he understood from his advisor at GFC appears to be the*

*basis on which he decided to proceed, with little understanding of the investment. This suggests Mr O either did not pay any attention to the paperwork he completed and signed for Dentons, or he was willing to disregard what it said. And it also suggests he had a lot of trust in his advisor at GFC.*

*So, if Dentons had rejected the application in the first instance I think it more likely that not GFC would have recommended an alternative SIPP operator and Mr O would have followed that advice and gone to another SIPP operator, where I think it is likely things would have proceeded as they did with Dentons and Mr O would therefore be in the same position he is now.*

*I acknowledge the loan did not proceed until around 20 months after the application and so Dentons had a further opportunity at this later time to consider whether it should allow the loan. But, even if I were to conclude it should not have allowed the loan at this time (and, for the reasons I have set out, I do not think there is sufficient available evidence to do so), I am not persuaded that would ultimately have changed the position. The SIPP was held entirely in cash at this time so a transfer to other operator should have been quick and straightforward; and I therefore think it likely this is the course of action GFC would have recommended and, for the reasons already given, Mr O would likely have followed GFC's advice.*

*To summarise, my conclusion is there is insufficient evidence to show it would be fair and reasonable to find Dentons should not have accepted Mr O's application and I am satisfied it is more likely than not the application would have proceeded, in any event. It would therefore not be fair and reasonable to uphold Mr O's complaint."*

Dentons accepted my provisional findings. The CMC did not. It said, in summary:

- I have not considered that Dentons failed to look at the full status of the GFS investment and that it was failing to allow any disinvestments from the fund from 2018. As Dentons had other clients who invested in GFS before Mr O it would have known that there was issue with the fund, therefore why did it still allow the investment to proceed in 2019.
- I have not fully investigated and taken the conflict of interest, as I have failed to show the checks completed by Dentons to allow this investment to proceed with this conflict.

### **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 have not been persuaded to depart from my provisional findings, which are quoted above.

In its response to my provisional findings, the CMC refers to a fund and fund management, but I have seen no evidence to show what Mr O entered into was a collective investment scheme or a fund of any other type. The evidence available shows it was an individual loan to a company, which appears to have been negotiated on individual terms. In this case, Mr O entered into an agreement to loan on an interest only basis for a period of a year. I understand Mr O later agreed to extend the term of the loan, and I accept it is possible other customers may also have agreed to extend terms. But I have not seen sufficient evidence to show Dentons should reasonably have concluded, in the particular circumstances of this case, that the loan simply would not be repaid. The lending was undoubtedly high risk; but I

do not think it would be fair and reasonable to say Dentons should simply have refused it on that basis.

As set out in my provisional findings, I think Dentons should have questioned the conflict of interest. But I cannot say with certainty how GFS would have responded to that, in this instance. In any event, as set out in my provisional decision, I think it likely Mr O would have proceeded regardless of Dentons actions. He was, in my view, clearly relying wholly on the advice of GFC; as the evidence suggests he either did not pay any attention to, or disregarded, communications from Dentons. And I understand other SIPP operators were allowing loans to GFS.

So, for the reasons given here and in my provisional decision it would not, in my view, be fair and reasonable to uphold Mr O's complaint.

### **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 Mr O to accept or reject my decision before 31 March 2025.

John Pattinson  
**Ombudsman**