

## Ombudsman's Determination

Applicant	Mr G
Scheme	Dentons Self-Invested Personal Pension ( <b>the SIPP</b> )
Respondent	Dentons Pension Management Limited ( <b>Dentons</b> )

## Outcome

1. I do not uphold Mr G's complaint and no further action is required by Dentons.

## Complaint summary

2. Mr G has complained that Dentons received a Statutory Demand from a landlord for service charges which it knew were fraudulent. Dentons paid the Statutory Demand because it did not want the pension firm to be wound up in the High Court. Out of revenge, Dentons served a Statutory Demand on him which he was forced to pay by threatening to make him bankrupt. Dentons knew all along that the service charges were made up and fraudulent and yet it still served a Statutory Demand on him. His contact at Dentons is very old and not sure what he is doing, he needs to retire and take his pension. Mr G does not trust him to manage his pension fund and he keeps threatening him. Mr G would like a refund of £5,931.65 plus compensation for the detriment and distress and inconvenience he has suffered.

## Background information, including submissions from the parties

3. Mr G has a SIPP with Dentons which was established in July 2011. Mr G has purchased a number of commercial properties through the SIPP and leases these to third party tenants. Mr G has a property company which acts as the managing agent. Mr G and Denton & Co Trustees Limited (**Denton Trustees**) act as trustees for the properties.
4. The SIPP purchased a leasehold property in July 2016 in Eccles Manchester (**the Eccles property**) and as it was a leasehold property, service charges would automatically apply.
5. Dentons say that in May 2017 and June 2017 Denton Trustees paid legal costs in relation to a dispute with the landlord of the Eccles property. On 31 July 2017 Denton Trustees received a Statutory Demand from the solicitors acting for the landlord

claiming £5,931.65 in unpaid service charges. The Statutory Demand said that failure to pay within 21 days would result in a winding up petition against Denton Trustees being presented to the court. Dentons contacted Mr G regarding the Statutory Demand it had received.

6. Dentons also contacted the landlord's solicitor and explained that Denton Trustees had no beneficial interest in the property and merely acted as professional trustee and asked for the demand to be withdrawn. Dentons also say that in the meantime it understood that Mr G was to appoint solicitors to deal with the demand.
7. Dentons received a reply from the landlord's solicitor who said that it was not concerned with who the beneficial owners were as Denton Trustees were one of the legal owners and therefore liable.
8. Dentons say that Denton Trustees act as professional trustee for over 6,000 pension schemes and were not prepared to get involved in litigation when:
  - There was a risk that a court could find against Denton Trustees and enforce the wind up of the company.
  - An injunction refusal would incur further costs for both parties.
  - The potential wind up of Denton Trustees would have a significant impact on the business.
9. Dentons say to avoid the potential damage it settled the following amounts:
  - £5,931.65 to Blackstone solicitors who were acting for the landlord on 5 September on 25 September 2018.
  - £2,150.72 to Salford City Council in respect of the rates due on the Eccles property on 14 January 2019.
  - The total amount paid inclusive of VAT amounted to £9,698.84.
10. Dentons subsequently appointed Druces Solicitors (**Druces**) to act on behalf of Dentons to recover the sums due. Following discussions between Druces and Mr G a payment of £6,941.77 was paid directly by Mr G to the client account of Druces who in turn paid that sum into the account of Denton Trustees on 26 February 2019. Denton Trustees issued a credit note for £2,297.56 plus VAT that is £2,757.07. (£9,698.84 - £6,941.77).
11. Dentons say no payments have been made to re-imburse Mr G for the above payment because:
  - Mr G's company acts as property agent for all the properties within the SIPP and it has yet to receive statements detailing the income and outgoings together with invoices and indeed the net rental income into the pension scheme account over the past few years;

- Mr G has been advised that no benefit payments whether on death or retirement and indeed in the event of a transfer to another Provider can be dealt with until these details have been provided.
12. Dentons also say that it is its view that Mr G as trustee, beneficiary and co-owner of the property made little attempt to engage with the freeholder to resolve the situation. Mr G was quite prepared for Dentons to suffer potential costs, a significant loss of business as well as reputational damage.
  13. Dentons also deny that Mr G was ever threatened or harassed by one of its directors and there is no evidence to support such allegations. The allegations are also blatantly discriminatory and in contravention of the 2010 Equality Act. The director's actions were all in support of his fiduciary duty as co-trustee of the SIPP.
  14. Mr G has provided details of the background to his complaint with the landlord of the Eccles property. This mainly concerns the non-production of an Estate Statement setting out the service charge expenditure as certified by a qualified accountant.

### **Adjudicator's Opinion**

15. Mr G's complaint was considered by one of our Adjudicators who concluded that no further action was required by Dentons. The Adjudicator's findings are summarised below.
16. The complaint concerns the relevant duties and responsibilities of Mr G and Dentons in respect of the Eccles property. Both Mr G and Dentons are trustees and legal co-owners of the property and Mr G through his property company is the managing agent for the property.
17. As trustees Mr G and Denton Trustees have joint responsibility to ensure that the Eccles property meets all of HMRC's requirements for investment in the SIPP and their fiduciary duties. As the managing agent Mr G is responsible for the collection of rents, paying these to the SIPP and authorising the payment of the service charges relating to the property.
18. Mr G has outlined his dispute with the landlord and the service charges. As a result of the non-payment of these service charges, the landlord took steps to recover these including the serving of a Statutory Demand on Denton Trustees as joint owner of the Eccles property. Dentons contacted Mr G concerning the Statutory Demand, but the Adjudicator could not see any evidence that Mr G took any action to avoid the Statutory Demand.
19. Dentons has explained what the impact of an enforcement by the court would be on its business if it resulted in a wind up of Denton Trustees. In light of this it decided to

pay the outstanding service charge and took action to recover this from Mr G. The Adjudicator was of the view that the action taken by Dentons was reasonable in order to protect its business and in the interest of the other pension schemes for which it was responsible.

20. Mr G also made a number of allegations regarding the action of one the directors of Denton Trustees. The Adjudicator could not see any evidence that the actions taken by the director were inappropriate or amounted to harassment.
21. Mr G did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr G provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Mr G.
22. Mr G has provided further information on the service charges levied by the landlord and says these were paid by Denton Trustees without his authority and who acted in breach of trust. The service charges were fraudulent and had been properly disputed. The landlord of the Eccles property had not produced an annual Estate statement certified by a qualified accountant for five years since the inception of the lease in 2016. None of the leaseholders and therefore the trustees had any idea what services had been provided, how much these cost and what their share of expenses were. This continues to this day and is a direct breach of the terms and conditions of the lease and the Landlord and Tenant Act 1954. As the Adjudicator has admitted, Dentons paid the invoices to protect its own business interests and not the interests of the scheme beneficiaries.
23. Mr G also says that as a result, Dentons breached its fiduciary duty as professional trustee, specifically:-
  - It had a higher, primary duty of care to the scheme in question
  - It did not act in the best interests of the scheme beneficiaries
  - It did not act impartially and did not act prudently, responsibly or honestly
  - It knowingly paid invoices from the scheme funds which were fraudulent or suspected of being fraudulent at the time.

The fact that the invoices cannot be verified even to this day proves beyond any reasonable doubt that Dentons breached its fiduciary duty to the scheme beneficiaries.

24. Mr G also says that Dentons were told several times that the invoices were fraudulent or suspected of being fraudulent, so it had fair warning before it paid them. Dentons ignored the advice from solicitors and the managing agent. Also of note is the fact that the landlord never made a statutory demand on him for the so-called debt.
25. Mr G would like the Ombudsman to use his powers to put things right. He wants Dentons to pay him £10,748.36 being the amount claimed against him when it tried to make him bankrupt plus substantial damages and legal costs as compensation.

## **Ombudsman's decision**

26. Mr G's complaint is primarily concerned with the service fees that have been levied by the landlord of the Eccles property. Mr G says that these service charges were fraudulent and had been properly disputed. Mr G had not paid the service charges as the landlord of the Eccles property had not produced an annual Estate statement. Mr G says that this is a direct breach of the terms and conditions of the lease and the Landlord and Tenant Act 1954. Mr G is also the property manager and normally it would be for the property manager to settle any such disputes regarding the commercial terms of the lease.
27. In this instance it would seem that the landlord was frustrated in its attempts to collect the service fees from Mr G and via its solicitors looked to collect the service fees from Dentons as a co legal owner. Dentons received a Statutory Demand from the landlord's solicitors threatening a winding up petition if the service fees were not paid within 21 days.
28. I can understand the concern that Dentons faced at the time, and I do not think it was unreasonable for it to settle service fees and to then seek repayment from Mr G. I see that Dentons also paid the outstanding rates on the property which should have been settled by Mr G. It is interesting to see that Mr G eventually reimbursed Dentons for the service fees it had paid.
29. Mr G has made a number of comments regarding Dentons fiduciary duty as a professional trustee and makes the claim that it had a higher, primary due of care to his SIPP. But that is to ignore the fiduciary duty that Dentons had to the other schemes for which it acted as a professional trustee, and the impact that a winding up petition would have on those schemes. I cannot therefore agree with Mr G's conclusion.
30. I would also point out that Mr G has a duty to act fairly and honestly with the professional trustee, and to provide all relevant documentation regarding the SIPP's income from the properties and costs, which Dentons say he has failed to do.
31. Mr G has asked that I award him a payment of some £10,000 which he claims is the amount claimed against him by Dentons when it tried to make him bankrupt. I can see no logic in this argument, and it was not included in Mr G's original claim which was to be refunded the service fees of £5,931.65 plus an award for the distress and inconvenience he has suffered. I do not find there are any reasons why Mr G should be reimbursed for the service fees that are payable or for any distress and inconvenience.

CAS-35397-P6H6

32. I do not uphold Mr G's complaint.

**Anthony Arter**

Pensions Ombudsman  
22 November 2021