Designated Professional Body Board

Public Determination

6 October 2021

Institute and Faculty of Actuaries
Held by Video Conference

Respondent Firm:	Barker Tatham Investment Consultants Limited
Board Members:	Andrew Allsopp FIA (Actuary member) John Birkenhead FIA (Actuary member) Alan Kershaw (Lay member) Darius Mayhew (Lay member) Tim Russell FIA (Actuary member) James Smith (Chair and Actuary member)

Allegation

The Complaint against Barker Tatham Investment Consultants Limited (the Respondent Firm) is:

When advising a Pension Scheme (the Scheme) in relation to its strategic asset allocation in 2013:

1. **The original implementation of the Respondent Firm's advice was not robust in changing market conditions and/or the assets in place did not provide the agreed level of protection. (Head of Complaint 1)**

2. **The Respondent Firm did not provide adequate disclaimers about their recommended strategy and implementation. In particular there was no explanation to the Trustee that the assets could need continual rebalancing or that ongoing monitoring was an essential part of the strategy. (Head of Complaint 2)**

3. **The Respondent Firm did not properly consider the complaint made by the Complainant. (Head of Complaint 3)**

Board's determination

The Board considered the following documents:

1. Statement of Facts, dated 28 July 2021;
2. The Respondent Firm's response to the Statement of Facts, dated 20 August 2021;
3. The Bundle of Supporting Documentation;
4. The Opinion Report, dated 26 August 2021; and
5. The Respondent Firm's response to the Opinion Report, dated 22 September 2021.

The Board determined that there was a breach of rules 3.35 and 3.36 of the DPB Handbook (version April 2013) in respect of Head of Complaint 2 (Communication).

The Board determined that there was no breach of the DPB Handbook (version April 2013) in respect of Head of Complaint 1 (Implementation); and no breach of the DPB Handbook (version August 2018) in respect of Head of Complaint 3 (Complaint Handling).

Sanction

The Board imposed a reprimand in private.

The Board considered it appropriate to provide guidance and advice to the Respondent Firm on the future conduct of its business, in accordance with section 5.21.1 of the DPB Handbook (version August 2018).

Background

1. On 23 September 2013, the Respondent Firm was appointed by the Complainant to give advice to the Scheme regarding its strategic asset allocation.

2. The Complainant did not provide any written instructions regarding the scope of the strategic investment advice which was required, including the target level of hedging.

3. The Complainant and the Respondent Firm attended a meeting on 7 October 2013, at which it is understood the Respondent Firm offered advice verbally. There are no Minutes which are available from this meeting to establish or confirm precisely what had been discussed.

4. In October 2013, the Respondent Firm issued its Strategic Investment Review report, which included advice to invest 35% of the Scheme assets into liability driven investment funds ("LDI funds").

5. No advice was given by the Respondent Firm, either verbally or in writing, which was framed in terms of the detail as to how the hedge should be constructed or the target level of hedging, relative to liabilities.

6. The advice given by the Respondent Firm was accepted and implemented.

7. In 2016, the Complainant received an annual funding update from the Scheme Actuary indicating that the funding position of the Scheme had worsened.

8. The Complainant raised concerns about this with the Respondent Firm on 26 October 2018 by registering a complaint and requesting a copy of the Respondent Firm's complaints procedure.

9. The Respondent Firm acknowledged receipt of the complaint on 2 November 2018. On 26 November 2018, the Respondent Firm advised the Complainant that they did not uphold the complaint, addressing the points raised in the original complaint.

10. Following further correspondence between the two firms, the Complainant wrote to the DPB Manager of the IFoA in July 2019 to raise a complaint against the firm under the terms of the DPB Handbook (version August 2018).

11. As Heads of Complaint 1 (Implementation) and 2 (Communication) relate to advice which was given by the Respondent Firm in 2013, the DPB Handbook relevant to the Board's consideration of these Heads of Complaint is the April 2013 version, which was in force at the relevant time.

12. Matters involving Head of Complaint 3 (Complaint Handling) took place in 2018. Accordingly, the relevant version of the DPB Handbook is that of August 2018.

13. The DPB Manager received the Complainant's complaint in July 2019. Accordingly, the Board's determination of this complaint is in accordance with the DPB Handbook (version August 2018).

Decision and Reasons on the Allegations

Head of Complaint 1

The original implementation of the Respondent Firm's advice was not robust in changing market conditions and/or the assets in place did not provide the agreed level of protection.

1. The Board found that the Respondent Firm had not breached the DPB Handbook (version April 2013) in relation to Head of Complaint 1.

2. Paragraph 3.86 of the April 2013 DPB Handbook states that: "*A DPB firm arranging a deal in an investment on behalf of a client, must have written instructions (or other written evidence) from the client specifying the transaction to be effected*".

3. There is no evidence of the Complainant having provided any written instructions to the Respondent Firm regarding the scope of the strategic investment required.

4. In October 2013, the Respondent Firm issued to the Complainant their Strategic Investment Review report. This report contained options for implementation, including an at-cost option carried out by the Respondent Firm, or free of charge via a particular Investment Platform A (well regarded by the Respondent Firm), which could carry out the oversight of the asset transfer process at no cost, saving the Complainant investment consultancy fees on the asset transfer.

5. The Complainant accepted the advice of the Respondent Firm.

6. In 2016, the Complainant received an annual funding update from the Scheme Actuary, which indicated that the funding position of the Scheme had worsened.

7. The Complainant raised concerns with the Respondent Firm in this regard and an exchange of correspondence took place.

8. The implementation method chosen by the Complainant included having Investment Platform A implement the advice given by the Respondent Firm. The Board concludes, on balance, that this was a measure by the Complainant to ensure cost-effectiveness, they having been given the option by the Respondent Firm. The Respondent Firm was not involved in arranging the implementation. Rather, Investment Platform A's procedure required instructions to come directly from the Complainant, albeit that the Respondent Firm had issued instructions to Investment Platform A.

9. There was a period of approximately three months between the advice having been given by the Respondent Firm in November 2013 and Investment Platform A having implemented such instructions in February 2014. The Board considers that this delay is neither particularly unusual, nor is it an indication of any wrongdoing on the part of the Respondent Firm. It is possible, on balance, that by the time Investment Platform A had implemented the instructions issued by the Respondent Firm, a different allocation was required to deliver the target hedging.

10. However, the Board found no evidence to demonstrate that the adoption of LDI or the overall asset allocation recommended by the Respondent Firm had been flawed or that it had not been in line with the Complainant's expectations at the time. No evidence has been presented in relation to any alternative asset allocation which the Complainant considers ought to have been adopted at the relevant time. There is no evidence that the assets had responded to changing conditions in a way other than

had been expected. Excluding the benefit of hindsight, the Board determines that there is no evidence to confirm that a different implementation should have been preferred at the time.

11. The Board concludes that, although the LDI portfolio did not match movements in the Scheme's liabilities as closely as the Complainant would have hoped, this was largely down to the lack of ongoing monitoring/rebalancing. However, the matter of whether the Respondent Firm had provided a sufficient level of communication in relation to the matter of ongoing monitoring and rebalancing is considered in terms of Head of Complaint 2 below.

12. The Board recommends that, in future, the role of the Respondent Firm and the Investment Platform be made clearer at the outset.

Head of Complaint 2

The Respondent Firm did not provide adequate disclaimers about their recommended strategy and implementation. In particular there was no explanation to the Trustee that the assets could need continual rebalancing or that ongoing monitoring was an essential part of the strategy.

1. The Board found that the Respondent Firm breached rules 3.35 and 3.36 of the DPB Handbook (version April 2013) in relation to Head of Complaint 2.

2. Rule 3.35 of the April 2013 DPB Handbook states that: "*When carrying on any regulated activities, a DPB firm must communicate clearly, completely and effectively with its clients*".

3. Rule 3.36 of the April 2013 DPB Handbook states as follows:

"*In particular, a DPB firm must ensure that all of their communication, whether written or oral, is clear, and that their method of communication is appropriate, having regard to:*

3.36.1 *the intended audience;*

3.36.2 *the purpose of the communication;*

3.36.3 *the significance of the communication to its intended audience; and*

3.36.4 *the capacity in which the DPB firm is acting*".

4. Paragraph 3.37 of the April 2013 DPB Handbook outlines an amplification, which states:

   "*The over-riding requirement is to ensure that the intended audience can gain a proper understanding of what is being communicated. Of necessity, technical and complex information may require to be communicated. The extent to which an explanation is required may depend upon the intended audience and the overall context. If it becomes apparent that a misunderstanding has arisen, appropriate steps should be taken promptly to clarify the position*".

5. The Complainant and the Respondent Firm held a meeting on 7 October 2013. There are no Minutes which are available for this meeting and, therefore, no record to confirm precisely the terms of the discussion and/or any agreement in relation to the way forward.

6. Shortly thereafter, in October 2013, the Respondent Firm issued its Strategic Investment Review Report. With regard to the matter of rebalancing or ongoing monitoring, the report stated as follows:

   "*Rebalancing and changing strategy*
   Rebalancing between funds and fund managers will be easier via [Investment Platform A] than if separate contracts had been set up directly with managers. Similarly, changing asset allocation (or fund manager) will be more straightforward under [Investment Platform A]".

7. In the context of LDI funds, the Board would have expected this explanation to cover the potential risks such as counterparty risk, collateral calls and distributions, variability of leverage and hedging levels, basis risk and roll risk. There is no evidence of such advice having been given to the Complainant by the Respondent Firm. There is also no evidence that the Respondent Firm had taken steps to check that the Complainant had an understanding of how LDI funds operate.

8. The Board would also have expected the Respondent Firm to have issued risk warnings to the Complainant as to why funds would not be a perfect hedge and why regular monitoring/rebalancing would be required. This would have attracted an additional cost, however, the importance of this should have been explained fully to the Complainant at the outset to enable it to make informed decisions. The

Respondent Firm did make these points in response to subsequent enquiries from the Complainant, however, there is no evidence that such warnings had been given prior to the Complainant having entered into the contract. Accordingly, these particular points had not been made at the appropriate time.

9. The Respondent Firm points out in mitigation that the Complainant is a Professional Trustee and that the advice meeting had been attended by two qualified actuaries associated with the Trustee. The Board accepts this might mean that the discussion of the key features and the risk warnings may not have required to be so detailed. However, the Board would still expect to see evidence of at least a brief reference to the risk warnings and evidence that the Respondent Firm had satisfied itself that the Complainant understood the relevant features, rather than having simply assumed that they did, as was the case.

10. The Board is satisfied that the Respondent Firm did not take reasonable steps to ascertain the level of knowledge of the Complainant with regard to the main features of LDI investment. On this basis, the Board determines that the level of communication with the Complainant was not clear and complete for the intended audience. With reference to the Respondent Firm's "Swap Shop" document/LDI explanation, it is evident that the Respondent Firm clearly understood LDI and that they were not acting outside of their own sphere of knowledge or expertise. The Respondent Firm was aware of the main features, however, they did not communicate this to the Complainant at the appropriate time, in an appropriate manner.

Head of Complaint 3

The Respondent Firm did not properly consider the complaint made by the Complainant.

1. The Board found that the Respondent Firm had not breached the DPB Handbook (version August 2018) in relation to Head of Complaint 3.

2. Rule 3.114 of the 2018 DPB Handbook states as follows:
"*A DPB firm must ensure that all complaints concerning services covered by this Handbook receive an appropriate response. A complaint must be dealt with in a way which is fair, impartial and thorough and the complainant should receive a response to the complaint as soon as is reasonably practicable. Except in the case of a sole*

practitioner, DPB firms should ensure that complaints are investigated by an employee of sufficient competence or a principal. The employee or principal should, where possible, not be directly involved in the subject matter of the complaint and have the authority to settle the complaint or have ready access to someone with the necessary authority".

3. The 2018 DPB Handbook does not specify timescales for responses to be issued. Instead, DPB firms are required to set these out in their Complaints Policy. The Respondent Firm's Complaints Policy states that it would acknowledge complaints within five working days and that they would respond within a further 25 days.

4. The initial letter of complaint issued by the Complainant to the Respondent Firm was dated 26 October 2018.

5. The Respondent Firm acknowledged receipt of the complaint on 2 November 2018.

6. A substantive response was issued by the Respondent Firm to the Complainant on 26 November 2018. The response was issued by one of the principals of the Respondent Firm, who was not involved in the original advice given, which was appropriate on the basis that it satisfies the requirement for the complaint to be dealt with by someone who has not had direct involvement in the subject matter of the complaint.

7. The Complainant wrote to the Respondent Firm with further comments on 4 January 2019.

8. The Respondent Firm replied to the above correspondence on 30 January 2019.

9. The Board determines that the responses issued by the Respondent Firm to the Complainant were within the timescales set out by its complaints policy.

10. While the responses from the Respondent Firm might be considered to be a "robust" rebuttal of the complaint, the Board does not consider them to be inconsistent with the requirement to be "*fair, impartial and thorough*", as per rule 3.114 of the DPB Handbook (version 2018).

Decision and Reasons on the Sanction

The Board was aware that the purpose of sanction is not to be punitive although it may have that effect in some circumstances. Rather, the purpose of sanction is to protect the public, maintain the reputation of the profession and declare and uphold proper standards of conduct and competence. The Board is mindful that it should impose a sanction, or combination of sanctions necessary to achieve those objectives and, in so doing, it must balance the public interest with the Respondent Firm's own interests.

In considering the sanction, the Board took into account the following aggravating factors:

- The Respondent Firm did not demonstrate insight to the Board by acknowledging that the Complainant could have been advised more fully at the outset regarding the risks in investing in LDI funds and regarding the need for ongoing monitoring/rebalancing.
- The Respondent Firm presumed that they were dealing with a more sophisticated audience and that, therefore, there was no obligation to outline all of the risks or the requirement for ongoing monitoring/rebalancing necessary in terms of LDI funds.

The Board also took into account the following factors in mitigation:

- Other firms may take the same approach by not advising clients fully at the outset regarding ongoing monitoring and rebalancing and dealing with it only when it becomes an issue.
- The Respondent Firm did take the necessary steps to deal with rebalancing when the need arose, however, the advice in this regard had been given only when it became an issue, later in September 2016.
- This was the first time the Board had considered a complaint about the Respondent Firm.
- There is no ongoing risk to the public. There is no evidence of any changes made by the Respondent Firm to their communications, processes or procedures to prevent a re-occurrence. However, as guidance is being issued, the particular circumstances should not be repeated.

The Board considered whether to impose the sanctions available to it. The reasons for the Board's determination are outlined below each of the potential sanctions, listed as follows:

1. Provide guidance and advice to the Respondent Firm on the future conduct of its business:
    - The Board determined that it is appropriate to issue guidance and advice to the Respondent Firm in accordance with section 5.21.1 of the DPB Handbook (version August 2018).

2. Reprimand the Respondent Firm in private:
    - The Board determined it to be appropriate to issue a reprimand to the Respondent Firm in private.

3. Require the Respondent Firm to take such action as it considers necessary to remedy the situation which gave rise to the breach and/or to reduce the likelihood of recurrence. This may include, but is not limited to, requiring the Respondent Firm to provide such compensation, redress or reparation (whether monetary or otherwise and whether or not in favour of any Complainant) as the DPB Board considers appropriate:
    - No evidence of financial loss was presented and the Board did not consider that any remedy was required in the circumstances. The Board determined it to be appropriate to issue guidance and advice to the Respondent Firm with a view to it taking steps in future to ensure that all relevant information was provided at the outset.

4. Impose a fine of such amount as it considers appropriate on the Respondent Firm. The maximum fine available to the DPB Board to impose is £4,389,350 or up to 5% of the total annual turnover according to last available accounts:
    - The Board did not consider that the gravity or duration of the breach regarding the failure to advise the Complainant fully at the outset warranted the imposition of a fine. There is no ongoing risk to the public. The Board is satisfied that the provision of guidance and advice reasonably addresses the breach, with a view to avoiding the potential for a similar complaint being raised in future.

5. Suspend the Respondent Firm from carrying on regulated activities (or certain specific regulated activities) for such period as it may determine:

- The Board did not consider that the gravity of the breach was so serious or detrimental to the Complainant as to require the Respondent Firm or its activities to be suspended.

6. Withdraw the licence of the Respondent Firm:
    - The Board did not consider the breach to be so serious or that it was in the public interest to withdraw the licence of the Respondent Firm.

7. Impose or vary such restrictions or conditions as it considers appropriate on the licence of the Respondent Firm:
    - The Board did not consider that the gravity or duration of the breach justified any restriction being placed upon the licence of the Respondent Firm, nor was it necessary to do so to preserve the public interest.

Guidance in terms of section 5.21.1 of the DPB Handbook (Version August 2018)

The Board considers it appropriate to issue guidance to the Respondent Firm with a view to reducing the likelihood of a recurrence of this type of complaint in future. Specifically, the Board recommends that, when advising clients to invest in LDI funds, the Respondent Firm should ensure that all risks associated with doing so, including the requirement to monitor regularly, the possibility of rebalancing, and any additional associated costs, are explained fully and that a written record of this is maintained. This would enable clients to make informed decisions at the outset and should avoid the potential for a client making a claim that they had not been aware of these steps which could ultimately become necessary.

Costs

The IFoA has not made an application for costs. Accordingly, a costs award has not been made in favour of the IFoA.

Right to appeal

The Respondent Firm has 28 days from the date that this written determination is deemed to have been served upon it in which to appeal the Board's decision.

Publication

Paragraph 5.44 of the DPB Handbook (version August 2018) states that determinations should be published unless there are proportionate reasons for restricting publication.

The Board has determined that there is no reason to depart from the presumption in paragraph 5.44 that the determination should be published. Accordingly, this determination will be published and remain on the IFoA's website for a period of five years from the date of publication.

Information sharing

In accordance with Rule 5.46 of the DPB Handbook (version August 2018), the Board has determined that it is not necessary to disclose this determination to any other regulatory bodies for the purpose of assisting them with undertaking their regulatory functions.

That concludes this determination.