

Designated Professional Body (DPB) Board

Public Determination

24 May 2023

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)

Darius Mayhew (Lay member)

Tim Russell FIA (Actuary member)

James Smith (Chair and Actuary member)

Referral from the Complaints Reviewer

This determination is in response to a referral back to the DPB Board, following a report from the Complaints Reviewer on 8 April 2022.

The referral back is restricted only to the question as to whether or not to require the Respondent Firm to take action under paragraph 5.21.3 of the DPB Handbook, and to make such determination under paragraph 5.21.3 as it considers fit in relation only to compensation (including in relation to costs). The Board is not required to redetermine the complaint, which was determined by the Board on 6 October 2021.

This determination may therefore be read in conjunction with the original determination of the Board, following its hearing on 6 October 2021. This is published on the Institute and Faculty of Actuaries (IFoA) website: <https://actuaries.org.uk/standards/designated-professional-body/complaints-against-dpb-firms/>.

Board's determination

The Board considered the following documents:

- The Bundle of supporting documents
- Complaints Reviewer's final report (8 April 2022)
- Board Determination (6 October 2021)
- Expert Opinion (21 August 2021)

Board's determination

The Board decided that the Complainant should not be awarded compensation by the Respondent Firm, in respect of breaches of paragraphs 3.35 and 3.36 of the DPB Handbook.

The Board decided that the Complainant should not be awarded costs in respect of professional fees or expenses incurred in pursuing its complaint.

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. In 2016, the Complainant received an annual funding update from its Scheme Actuary indicating that the funding position of the Scheme had worsened and it subsequently complained about this to the Respondent Firm on 26 October 2018.

3. The Respondent Firm advised the Complainant that they did not uphold the complaint, addressing the points raised in the original complaint, after which the Complainant raised a complaint with the IFoA in July 2019, which was considered by the DPB Board.

4. The DPB Board made a determination on 6 October 2021 and upheld one of the headings of complaint, namely:

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

5. The Board found that the Respondent Firm breached paragraphs 3.35 and 3.36 of the DPB Handbook (version April 2013).

Paragraph 3.35 of the DPB Handbook states that: *“When carrying on any regulated activities, a DPB firm must communicate clearly, completely and effectively with its clients”*.

Paragraph 3.36 states: *“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”*.

6. The Board determined to sanction the Respondent Firm by:

- issuing guidance and advice to the Respondent Firm in accordance with paragraph 5.21.1 of the DPB Handbook (version August 2018);
- issuing a reprimand to the Respondent Firm in private in accordance with paragraph 5.21.2.

7. Following a review by the Complaints Reviewer, the matter was referred back to the DPB Board to review the issue of compensation, in particular considering an email from the Complainant which set out the losses it believed it had suffered. (This email had not previously been made available to the Board).

8. The DPB Board gave both the Complainant and the Respondent Firm a further opportunity to provide any additional evidence they might have, in particular relating to any instructions from the Complainant to the Respondent firm about the investment strategy they required. The Board then arranged an additional hearing to consider this evidence on 24 May 2023. The Board considered the evidence available to determine if the breach of communication, found established on 6 October 2021, caused loss to the Complainant, and in doing so considered the following factors.

Decision and reasoning

1. In reaching its decision, the Board considered the background to the complaint and the nature of the advice which the Respondent Firm provided to the Complainant, including the typical characteristics of the liability driven investment (LDI) product which was recommended.

2. It was common industry practice at the time to advise the use of an LDI product in order to help smooth the risks associated with ongoing fluctuations in the valuation of a pension fund, which are typically caused by periodic movements in gilt yields compared with the ongoing fluctuations in the market value of assets. This strategy means that a percentage of the pension fund is allocated to LDI investments, which are specifically designed to help closely match movements in the assets to future movements in the liabilities. However, different pension funds will require differing levels of protection, from a percentage of the funded liabilities to 100% of the total liabilities.

Instructions to the Respondent Firm

3. In order to determine whether or not the advice or other services provided by the Respondent Firm to the Complainant caused a loss, the Board considered it necessary to consider the nature of the instructions provided to the Respondent Firm, and in particular the instruction as to the level and type of hedging required. It is also important to consider whether the instructions were to protect the monetary value of the deficit, or the funding level, which would result in different strategies for providing protection.
4. The Board requested supplementary evidence from both the Claimant and Respondent Firm on the instruction given to the Respondent Firm on the level and type of hedge. However, no instructions to the Respondent Firm as to the level of LDI hedging required were available. The Complainant provided supplementary evidence in the form of a telephone note of a call between the Complainant and the Respondent Firm on 30 March 2017, which refers to the Respondent Firm saying that it standardly advises a 100% LDI hedge to its clients. The Respondent Firm said in response that it does not have a record of advising a 100% hedge and that this would not be considered relevant as each client's needs are treated on an individual basis.

5. The Complainant also alleges that it required protection of the monetary value of the deficit, however the Board considers that it is not sufficiently clear in the evidence that this formed the instructions to the Respondent Firm and that some of the evidence appears to be contradictory. The Board considers that in cases where the pension fund is in deficit, it may be more typical to provide protection up to the funded level of the assets. The Board also reviewed a meeting note from 7 October 2013, between the Complainant and the Respondent Firm. This records that in relation to investment objectives, the funding level, rather than the deficit was important to the Complainant. The Respondent Firm's Strategic Investment Review report dated October 2013 states "The funding level in percentage terms is of more importance than the size of the deficit in monetary terms".
6. The Board determined there was therefore insufficiently clear evidence available about what the Respondent Firm was asked to do in providing its original investment advice.

Monitoring

7. The Board is aware that investment consultants do not always recommend close monitoring of the level of the hedge and this will depend on the level of hedge adopted.
8. The Board noted from their covering email of 18 October 2013, that the Respondent Firm had made an offer to provide ongoing investment monitoring. In their response to the complaint dated 26 November 2018, the Respondent Firm states that they recommended investment monitoring be put in place a number of times, but this was not implemented. It is not clear if implemented, whether the monitoring report would have included a section on monitoring the amount of hedging. However, this may well have been a matter discussed if investment monitoring was implemented.

9. The Board notes that it has already determined that the Respondent Firm did not sufficiently communicate the risks of the LDI product. One of the risks may have been the risk of the level of hedge changing over time, however, the importance of communicating this risk would depend on the instruction as to the level of hedge.
10. The Board is unable to conclude on the evidence that if investment monitoring had been put in place, any subsequent loss would have been averted.

Potential losses

11. The Board also considered the nature of potential losses incurred by the fund, and whether these might have been caused by the Respondent Firm not recommending monitoring of the amount of the hedge.
12. The Board considered email evidence provided by the Complainant, which was not considered as part of the Board's original determination and which the Complaints Reviewer has asked the Board to review. This email was sent on 21 August 2020 from the Complainant to the IFoA. It refers to the fund's annual funding update as at 30 June 2016, prepared by the Scheme Actuary, which alleges there was a scheme deficit of approximately £1.5 million and it makes a comparison with an alleged shortfall of £675,000 at the previous actuarial valuation on 30 June 2014. The email then concludes that this '...indicates to us that the loss to the Scheme between the date of the 2014 valuation and the 2016 update due to the hedging position is in the region of £1m...'.
13. The Board notes that there are no further calculations provided by the Claimant to determine potential loss, beyond the amounts quoted above, and which are based on the actuarial update. These calculations were provided for the trustees of the scheme, using approximate actuarial techniques and were not intended to calculate potential losses.

14. The Board also notes that there is no evidence that the increase in deficit specifically relates to the Respondent Firm not monitoring the LDI hedge. There is no evidence relating to:
- a. The instruction to the Respondent Firm on the amount and type of hedge.
 - b. What type and frequency of monitoring would have been put in place.
 - c. What the funding position would have been had monitoring been put in place.
 - d. What the value of loss would be on method and assumptions appropriate for assessing loss.
 - e. What the current value of loss is at the present date.
 - f. Other matters that may have impacted on the deficit.
15. The Board concluded that based on the evidence, it was not possible to determine with sufficient certainty what the funding position might have been, had the Complainant either received different advice, or had the fund been monitored differently.

Conclusion

16. In conclusion, the Board considers that there is insufficient evidence provided to determine that the Respondent Firm's acts or omissions, including in relation to its breaches of the DPB Handbook, caused a loss and if it did, the size of any loss. Therefore, the Respondent Firm is not required to compensate the Complainant.

Costs

1. The Complaints Reviewer has also asked the Board to consider whether to award costs in respect of professional fees or other outlays in pursuing the complaint. The Complaints Reviewer is of the opinion that Paragraph 5.21.3 of the Handbook gives discretion to the Board to consider whether

any order should be made against the Respondent Firm, in relation to any or all of the professional costs (even if not set out previously). It is up to the Board's discretion how to consider this.

2. The Board decided to consider first whether costs should be awarded; and if so, what those costs should be (having regard to any additional evidence from the Complainant).
3. The Board previously determined not to award costs against the Respondent Firm in respect of the relevant DPB Handbook breaches. The Board considered whether any additional evidence had been presented which would alter that decision. The Board concluded that it had not been presented with any additional evidence which altered the original decision not to award costs.
4. On the basis the Board concluded not to award costs it was unnecessary to consider the amount.

That concludes this determination.