DRN-4366944

The complaint

Mr C complains about the level of service he said he was given by Barker Financial Associates (Barker Financial) when he was considering taking his pension benefits. He says this level of service, as well as Barker Financial 's lack of communication, led to his investment losses being higher than they might otherwise have been.

What happened

Mr C had transferred two of his existing pension plans - both held with one provider and valued in total at around £176,000 - to a new provider using Barker Financial in 2011. He invested across four funds in line with a balanced attitude to risk (ATR).

In January 2022 Mr C met with Barker Financial to discuss the possibility of accessing a tax free cash (TFC) lump sum without drawing any income. As a result he was advised to transfer another smaller pension he held elsewhere into a drawdown plan, but he didn't transfer the main pension plan he'd set up in 2011.

Barker Financial says it didn't recommend transferring the main plan as it had fallen in value, and it agreed to monitor the funds' performance and get back to Mr C when it had recovered sufficiently. But Mr C says he had asked Barker Financial to find out into which funds he was invested and the reasons for the losses. He said he wanted Barker Financial to make him aware of those reasons so that he could consider what to do next – which may have involved transferring elsewhere to consolidate the losses he'd incurred.

When Mr C himself later discovered the funds had fallen further, he complained that Barker Financial didn't known how his pension was invested when he discussed the matter of accessing TFC in January 2022. He said he'd discovered that some of the funds were invested into high risk investments - which had since failed, and this left him with financial losses of around £86,000. He thought Barker Financial had been negligent in managing his funds – especially as he said he'd been a cautious investor. He also said he'd not had any contact or response from Barker Financial for around six months – which he believed caused his losses to increase substantially.

Barker Financial said that it had set up a drawdown plan for Mr C in January 2022 at which time it was agreed not to transfer his main pension because of a reduction in its value – until it recovered sufficiently. It said the plan hadn't recovered by the time Mr C transferred his pensions elsewhere which was why it hadn't come back to him. It also disputed that Mr C had made numerous attempts to contact it and said there was only evidence of one missed call made to the adviser while he was on holiday.
Barker Financial concluded that Mr C's complaint was one of fund performance – which it didn't believe it could be held responsible for in light of global events which affected the markets during that time.

But Mr C didn't accept that outcome, so he brought his complaint to us where one of our investigators looked into the matter. He didn't uphold the complaint making the following points in support of his findings:

- He explained what he thought were the external reasons for the fall in the value of the funds, and concluded it was unlikely to be because of them being "high risk" investments.
- He noted that Barker Financial had conducted an annual review in 2022 but thought it agreed to contact Mr C when his main fund had made a recovery. He noted that Barker Financial wasn't mandated to make changes to Mr C's portfolio without his instructions.
- He thought that even if Mr C had moved into more cautious funds these would have been adversely affected by the increase in inflation and interest rates – so Mr C may have incurred greater losses if he'd invested in that way.
- He didn't think Barker Financial was responsible for the adverse movements in the markets during this time.

Mr C didn't agree. He didn't think we'd understood his complaint - which he said wasn't about whether Barker Financial was responsible for the poor performance of his pension fund. He explained that after he transferred his smaller pension to the drawdown plan, he didn't receive information from Barker Financial about his main pension plan's composition. When he did ask it to review that pension, he found its value had fallen considerably and he asked Barker Financial to find out why. But he didn't receive that information and when he checked the value four months later found it had fallen by around another £60,000. His complaint was that if it had provided him with the information he requested he could have taken action to reduce any further losses.

He said he later transferred all his investments using another adviser because he had lost faith in Barker Financial. He wanted a fuller investigation into why Barker Financial hadn't communicated the reason for the investment falls to him, as well as a review into what should have happened. He thought the size of the overall portfolio he held with Barker Financial ought to have warranted a greater degree of ongoing reviews and communication.

The investigator said that he'd based his conclusions on the evidence that was presented to him and had given more weight to Barker Financial's written evidence from its suitability report, stating that it was better to wait until his plan had recovered in value before transferring, than Mr C's recollections of an expectation that Barker Financial would contact him to explain why the losses had occurred. He said he hadn't seen anything to support the idea that Barker Financial would pro-actively investigate the fund's performance and advise Mr C of that outcome.

He thought that Mr C's original complaint didn't cover the question of a poor level of service – which he said Mr C should raise with Barker Financial in the first place. But he had looked into the matter of the agreed levels of annual reviews and thought that it was unlikely an agreement was put in place after the retail distribution review (RDR) to provide an ongoing review service.

But as no resolution could be found the complaint was referred to an ombudsman – so it's been passed to me to review.

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.

And having done so I've reached the same conclusion as the investigator. I know Mr C feels strongly about this matter and will be disappointed with this outcome – and I have some sympathy for the position he's now in having suffered a loss in the value of his pension fund.

But I don't think Barker Financial has done anything wrong here – so I'll explain my reasoning.

In his response to the investigator's assessment Mr C said, "*the issue to determine is not whether Barker Financial is responsible for the poor performance of (his) pension fund…. that is not the case although I believe they contributed to the substantial fall due to their negligent activity towards checking the reasoning behind the fall."*

Although I also note that in his complaint letter to Barker Financial he said, "*It turns out that on further investigation with another service provider that some of the fund was held in a high-risk investment within the US and Canada markets which has since failed."*

So I think Mr C did raise the question of whether the funds in which his pension was invested may not have been suitable for him. We wouldn't usually uphold a complaint on the basis of investment performance alone because the very nature of investments means that they will fall and rise in line with many external factors which aren't generally the responsibility of the provider. But we can investigate performance if it's viewed through the lens of the suitability of a recommendation. So I've started by considering the suitability of the investments within Mr C's pension plan.

The suitability of the funds

When Barker Financial set out its recommendation for Mr C to transfer two of his pension plans in 2010, it considered his ATR. It noted that he was broadly a "balanced" investor which was defined as "*whilst you err on the side of caution, you do realise that to achieve real growth in the long term, some degree of risk is necessary."* I haven't seen any evidence of the accompanying conversation that led to that definition but, looking at Mr C's circumstances at the time, it doesn't seem to be an unreasonable conclusion. In any case Mr C signed the review as being an accurate summary of the information Barker Financial had gathered in order to make its recommendation.

I've looked at the four funds that Barker Financial used to invest the money and I've concluded that they equate to a broadly balanced risk strategy – including an income fund, a bond fund, a passive balanced fund, and a global growth equity fund. In my view, when considered overall, this was broadly suitable for Mr C's ATR. I note what Mr C has said about investment in the US and Canada – which he said were assets which had subsequently failed. But in order to provide a balanced investment some funds will inevitably use some higher risk assets and some lower risk ones – giving an overall balanced picture. I can't say Barker Financial is responsible for the performance of each fund within the portfolio, but I'm satisfied that it fulfilled its role in providing a suitable recommendation in line with Mr C's ATR. In any case I note that Mr C said he was relatively happy with his investment in January 2022.

In 2022, when Barker Financial arranged the switch of his other pension into a drawdown plan, Mr C felt his ATR had dropped slightly to "moderately cautious" – but this was only for his new drawdown plan. I note that this is still inconsistent with Mr C's assertion that he'd always been a cautious investor.
Mr C hasn't disputed the suitability of the new drawdown plan, but I did go onto consider whether Barker Financial ought to have revisited the original ATR on his main pension at that point, but I don't think it was obliged to.

I say that because Barker Financial was only concerned with transferring one plan into drawdown for Mr C to access his TFC, so there was no reason to review the main plan and Mr C hadn't given any reasons for Barker Financial to consider that his overall ATR had changed. The change to "moderately cautious" was simply to de-risk the money he had put into drawdown after accessing the TFC. And Barker Financial had said that it was monitoring his main pension plan to subsequently recommend a transfer when it had recovered sufficiently. It would seem to me that wouldn't be the best time to switch to different funds.

But in any case, even I'm wrong in my assumptions, I haven't been presented with any basis on which to suggest Barker Financial had agreed to review the suitability of the original contract and, as I'll explain below, there was no agreement in place for it to offer an ongoing review of that plan. Simply because the performance had fallen wasn't, in my view, a reason to review its suitability. Even at its lowest point before he transferred, the plan had largely doubled in value from its original transfer value from 2010.

And the financial review document from 2010 carried the following statement. "*As part of our ongoing service we offer annual reviews. This review will include your attitude to risk, asset allocation and premium levels. Please contact us if you wish to avail yourself of this service."* There's nothing to suggest that Mr C did take up the offer of this service so I can't reasonably say Barker Financial had an obligation to review his ATR with regards to the main pension plan.

So having considered what happened in 2010 and 2022 I haven't seen any evidence to support the idea that either of the recommendations were unsuitable or that Barker Financial ought to have done more to review the main pension plan.

But the central point Mr C has raised here is that, following the January 2022 meeting and transfer to drawdown, he expected Barker Financial to come back to him with an explanation for his fund's disappointing (recent) performance, so that they might consider the next steps to ensure he didn't suffer any further losses. He says that in actual fact Barker Financial didn't communicate with him any further after the January 2022 meeting - which led him to lose faith in its service and transfer his investments elsewhere.

So I've gone on to consider what Barker Financial ought to have done, and what other obligations it might have had to Mr C which would have led to a review of his main pension plan and a possible different course of action.

<u>Events following the January 2022 meeting</u>

In January 2022 Barker Financial carried out a fact finding exercise with Mr C before issuing a suitability report setting out its recommendation. Its advice was principally around the switch of a smaller pension to a drawdown plan to "*take some TFC and leave pension until a later date."* But it did provide a valuation for his main plan – which was £409,445.24. The notes that were made on the valuation page within the report stated that "*fund value gone down over 12 months. Will wait to transfer when fund comes back up."*

These notes didn't suggest that Barker Financial thought it needed to provide Mr C with more information about his plan, but that it would monitor its performance until it hopefully reached a level which meant the transfer to the drawdown plan became a suitable recommendation.
The fact find document had already noted that Mr C had "*sufficient capital and income for living expenses"*, so the evidence wouldn't suggest there was an urgent need to transfer and access further TFC at that point.

But even if it could be argued that these "notes" were inconclusive, I've seen a copy of the suitability report issued to Mr C which set out Barker Financial's position in a more formal sense. The report said that "*following our discussions I recommend a transfer of your xx pension to a xx flexible access income release pension to release your tax free portion of the pension. At this stage because the value of your (main) pension has reduced over the last* *twelve months it is prudent to wait until the value increases back to the same levels and then add this to your drawdown plan at a later date."*

I think this was clear in stating that Barker Financial didn't propose to do anything about the main pension or to provide Mr C with any further information about the composition of the funds until it was satisfied that the fund value had recovered sufficiently. Barker Financial has since confirmed that its own records show that the fund hadn't recovered before Mr C transferred to a different provider using a new adviser – which was also supported by the transfer value that was applied. So I can't reasonably conclude that Barker Financial failed to provide Mr C with information he expected it to come back to him with, nor can I reasonably support the idea that it was obliged to do any more than what it said it would do in that report.

I don't dispute Mr C's recollections of what he thought Barker Financial promised to do. But like the investigator, I've given more weight to the written information I've seen and, on balance, I've concluded that Barker Financial wasn't intending to investigate the reasons behind the fund's performance and relay that information back to Mr C for further discussion and action. I think Barker Financial was clear that it would come back to Mr C when it thought the fund had recovered sufficiently to ensure it was more appropriate to recommend the transfer to his drawdown plan.

Mr C says that he tried to contact Barker Financial on numerous occasions following the transfer of 2022 but that it failed to respond to him or answer his calls. Mr C hasn't provided any evidence to support the claim of a lack of response and Barker Financial says it can't find any record of any missed communications from him – although it accepted that it received a missed call which the adviser didn't take because he was on holiday (although no message was left). Barker Financial also says that it did receive a text message from Mr C to which it responded that there had been no upturn in the fund's performance.

But in any case, I think Barker Financial's position had been clear that it would contact Mr C when it felt the plan had recovered sufficiently to consider a transfer – so there's nothing to support the claim that Barker Financial should have contacted Mr C during that time.

However, Mr C also raised the question of whether Barker Financial had an obligation to review his plans and investments on a regular basis, particularly in light of the substantial investments he held which were under Barker Financial's management. So I've also considered whether Barker Financial had any formal agreements in place which ought to have obliged it to provide Mr C with regular ongoing reviews and service.

The question of ongoing service

The investigator thought Mr C's complaint about the poor level of ongoing service was "widening the scope of his complaint" and should be raised to Barker Financial as a separate matter. But if I understand Mr C's point correctly I think it's around the lack of communication regarding the performance of his fund and the overall level of the ongoing service he received considering the overall level of investments he held with Barker Financial.
So I've answered these points below. But if Mr C has any other matters relating to Barker Financial's service – about which I haven't seen any evidence – he should present that to Barker Financial in the first instance.

I understand Barker Financial's initial transfer advice from 2010 incurred an initial charge of 1.5% with a further ongoing 0.5%. Prior to the RDR charges were generally paid to advisers in the form of 'commission' from product providers - which would typically be in the form of the two charges set out above. An ongoing charge wouldn't usually translate into a firm providing regular advice, it was simply ongoing 'commission' the firm would receive from the provider. After RDR the payment of commission was no longer allowed, and so individual arrangements were usually agreed between consumers and businesses to set out what fees would be applied to provide a specific level of ongoing service.

There's no evidence to suggest Barker Financial had such an agreement with Mr C, so on balance I don't think it had any obligation to provide a regular ongoing review service. I can't reasonably say Barker Financial didn't provide Mr C with an appropriate level of service based on what I've seen. Mr C has set out his view of what he would have expected as a level of service based on the level of investments he held with Barker Financial, but that doesn't mean he should have received a particular level of service based on his own expectations. I would need to be provided with a signed agreement regarding the 2010 advice setting out what should be provided to support such a claim - which I haven't seen in this case.

I think this position is supported by what happened in 2022 when Barker Financial advised on the drawdown plan. This was some years after the RDR so Barker Financial couldn't simply earn commission from the provider. With regards to "costs and charges" the suitability report noted that "*charges within an income drawdown plan are higher than a conventional pension annuity due to the requirement for regular reviews and investment advice to ensure the pension fund does not run out of money. There is no initial set up charge, a 0.5% on going charge for future advice."*

So I think this clearly explained that the drawdown plan would need regular (annual) reviews and what charge would be applicable for such a service. But there's no evidence such an agreement was in place regarding the main pension following its transfer in 2011 – indeed Mr C himself has accepted that he didn't avail himself of the separate offer of review service that Barker Financial offered at the time.

So I can't support Mr C's claim that Barker Financial should have provided an ongoing review service for that pension, or that it was obliged to do anything more than it did to review the plan or Mr C's own personal circumstances in respect of its ongoing suitability. And I've also concluded that, on balance, and based on the contemporaneous evidence I've seen, Barker Financial wasn't obliged to revert back to Mr C with further information about his plan shortly after the 2022 January recommendation.

The fall in the value of Mr C's pension plan in 2022 was most unfortunate, but it was a result of market volatility caused by a number of external factors beyond Barker Financial's scope of responsibility. I don't think, based on what I've seen, there's sufficient evidence to show that Barker Financial was responsible, through a lack of action, for Mr C being unable to take steps to mitigate the further losses he suffered throughout 2022.

My final decision

For the reasons that I've given I don't uphold Mr C's complaint.
Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 9 February 2024.

Keith Lawrence
Ombudsman