DRN-5535192

The complaint

Mr G says his financial adviser Steven Barton failed to invest his pension funds in line with his requirements and that it also delayed taking agreed corrective action. He says the charges he's incurred on his funds were wrong and that the firm has generally provided him with a poor service.

Steven Barton provided advisory services to Mr G and his wife at the same time. Mrs G has brought a separate complaint.

What happened

In February 2020, Mr G and his wife met with a financial adviser from Steven Barton. At the meeting they discussed their existing retirement provisions and future plans. Mr G had a defined benefit pension entitlement from a former employer worth around £8,800 a year and a tax-free lump sum of around £58,000. He was already in receipt of small annual pension compensation payment of about £750. He had two personal pensions which together were valued at around £279,000. Mr G was due to receive his state pension of around £8,476 per annum from January 2024. And he had funds in premium bonds and cash in Individual Savings Accounts worth around £209,000.

Following advice from Steven Barton in April 2021, Mr G switched his personal pensions into a Self-invested Personal Pension with Standard Life – the value of the funds at that time was around £285,000. His money was invested in the SL Myfolio IV fund (74%), First NZ Lindsell Train Global equity B GB (14%) and First NZ, Liontrust SF Managed 6 Acc (9%). A small proportion of funds were held in cash.

In October 2021, on the advice of Steven Barton, Mr G added a further contribution to his SIPP. And in June 2022, he made a tax-free cash (TFC) withdrawal of around £67,000. In July 2022 there's a note of a meeting between Mr G and Steven Barton which indicates there were concerns about his investments and confirmation that he should be in cautious funds.

Mr G met with his adviser in June 2023 to discuss fees which he considered were being overcharged and the suitability of the current investments. It was agreed he wanted to 'play it safe' so Steven Barton would sell the remaining investment funds to re-invest into capital guaranteed structured products. Mr G says it was agreed to transfer some of the structured products that were already invested in non-guaranteed structured products, into fully guaranteed products. And the firm also confirmed it would refer the fee dispute to the relevant department for an explanation.

By 2nd July 2023 Mr G says Steven Barton had transferred his remaining investment funds into an unsuitable non-guaranteed product. The firm undertook to correct its error and carry out the other transfers as agreed at the June meeting, but he says it didn't take any action.

Mr G complained to Steven Barton about what had happened on 23 October 2023. He raised his concerns about the performance of his pension, delays in taking agreed actions and the general level of service he'd received.

Although Steven Barton acknowledged Mr G's complaint, it didn't provide him with a final response letter. So in February 2024, he asked this Service to investigate his case.

Steven Barton sent Mr G an email on 20 May 2024, requesting they discuss a potential offer before formalising this in an official letter. It suggested it would review Mr G's pension funds and calculate any losses assuming he'd have achieved a real return of 5% per annum. In addition it would offer him £500 compensation in recognition of the things it had got wrong.

Mr G met with his financial adviser on 24 May 2024 to discuss the basis for compensation. Despite the meeting and subsequent conversations, he hasn't received a letter outlining any formal redress proposal from Steven Barton. Indeed, in its most recent communication from March 2025 it now suggests he hasn't suffered a loss.

So, an Investigator at this Service considered Mr G's complaint. She upheld his case concluding that Steven Barton's investment fund recommendations had been unsuitable. Mr G didn't agree with all the Investigator's conclusions, in particular he thought she hadn't been right about the level of risk he'd wanted to take on. Steven Barton failed to respond to her view.

As both parties couldn't agree with the Investigator's recommendations, Mr G's complaint was been passed to me to review afresh. I issued my provisional decision on 25 April. Since I've received no new evidence or arguments from either party I see no reason to depart from my initial conclusions. I'll add a little more explanation in response to a query from Mr G about our approach on fees and how that matter is catered for in the redress.

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.

Where there's conflicting information about the events complained about and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what's most likely to have happened.

I've not provided a detailed response to all the points raised in this case. That's deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I've taken into account all submissions, I've concentrated my findings on what I think is relevant and at the heart of this complaint.

I'm upholding Mr G's complaint. I'll explain why.

The first matter I must address is the failure of Steven Barton to engage with this Service as it is required to do. It hasn't provided a case file, so I've not been able to review the key documents I would expect to see in a case like this including a detailed fact-find, a risk appetite and capacity assessment or any suitability letters and recommendations. Any information we do have is that shared by Mr G, which includes some meeting notes and email exchanges between him and the firm.

Not only is the approach of Steve Barton highly unusual, it necessarily means it hasn't taken the opportunity to confirm or otherwise the key facts, findings and conclusions as laid out by this Service, nor to articulate its own position. It's arguable that this is because it accepts it is responsible for failings in relation to how it has handled Mr G's pension interests. Indeed correspondence it has had with him seems to indicate such, given the informal approach it made to him during the course of his complaint with this service and the potential offer that was on the table at one point, but which it seems to more recently rowed back from.

I've considered the extensive regulation around the services like those performed by Steven Barton for Mr G. The FCA Handbook contains twelve Principles for businesses, which it says are fundamental obligations firms must adhere to (PRIN 2.1.1 R in the FCA Handbook). These include:

- Principle 2, which requires a firm to conduct its business with due skill, care and diligence.
- Principle 3, which requires a firm to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
- Principle 6, which requires a firm to pay due regard to the interests of its customers and treat them fairly.
- Principle 7, which requires a firm to pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

So, the Principles are relevant and form part of the regulatory framework that existed at the relevant time. They must always be complied with by regulated firms. As such, I need to have regard to them in deciding Mr G's complaint.

At the heart of this complaint is that Mr G says his retirement monies were invested in unsuitable funds – he says he was exposed to risk beyond his appetite. I've already noted the complete absence of the key documents I would've expected to have been generated by Steve Barton's advice process. I'm limited to three sets of meeting notes, Mr G's own testimony and the facts about where his funds were invested.

In its meeting note from 17 February 2020 Steven Barton says the following about Mr G's investment risk outlook:

"Based on initial discussions, [Mr G] has a cautious/defensive investment risk profile…"

This statement is unambiguous.

Some information is captured in the note about Mr G and his wife's pension provisions, savings and seemingly the income they required in retirement. I note the following observation is made:

"As can be seen from the spreadsheet, the desired income is only in shortfall for two years but can comfortably be covered by either drawing a modest income from [Mr G's] personal pensions or by investing some of the cash ISAs already held into higher income plans that we can offer."

This seems to suggest that although the plan developed by Steven Barton for the couple's income in retirement (which of course we don't have a copy of) is in shortfall for two years, this can be easily catered for. This suggests to me no need for significant risk taking with their pension and investments.

It might be argued that Mr G had reasonable capacity for loss given the wide range of pension pots and savings available to him. But simply having some capacity for loss doesn't mean he should be exposed to it. We understand he had a cautious/defensive risk profile. And it seems he didn't need to take on significant risk to meet his financial plans. He was also close to retirement.

If I consider the pattern of Mr G's pensions and savings it's not clear that he had significant knowledge of the sort of funds Steven Barton ended up recommending. Indeed, outside of his pensions his savings were all in near cash through premium bonds and cash ISAs.

We know that Mr G switched about £285,000 of his pension funds to a Standard Life SIPP and into certain investments recommended by Steven Barton in April 2021. Just over a year later, the firm's meeting note starts by recording that:

"*Notes from review meeting on Wednesday 13th July 2022…meeting to look at poor fund performance and how we can switch funds to gain back those losses and set a trend for achieving long term growth, but overall, still keeping to a cautious risk outlook."*

Further, the final meeting note we have been provided from June 2023 confirms again:

"As [Mr G] wants to play safe, we agreed to sell the remaining investment funds and re-invest those into capital guaranteed structured products…so that there is a definite growth, albeit possibly lower than he may achieve if fully invested…"

Based on the evidence available to me I've concluded Mr G's pension funds should've been invested in accordance with what was recorded by Steven Barton at the outset as his appetite – he should've had a cautious/defensive strategy put in place.

Turning to the funds Mr G was invested in on the advice of Steven Barton, I note neither party challenged the Investigator's summary. She said:

"I don't have a copy of any suitability letter, outlining SB's recommended investment strategy. So I've considered whether I think the chosen investments were in line with Mr G's cautious attitude to risk and overall circumstances."

"I've had a look at the information available on the Abrdn website regarding the MyFolio fund ranges. It's explained that the MyFolio IV:

'Is designed for investors who are very comfortable with investment risk, aim for high long-term investment returns and do not overly worry about periods of poorer performance in the short-to-medium term'.

"I don't have a copy of the 2021 fund factsheet for MyFolio IV, so I've reviewed the 2024 document for reference. It's noted that the fund risk IV aims to be the second highest risk fund in this range. I recognise that risk ratings are subjective and it's not our role to risk rate investments. However we can consider whether a mix of investments was suitable."

"The asset allocation of this fund notes that around 60% of the fund is invested in global equities and commercial properties. The remaining assets are invested in government bonds and cash. Whilst the risk of equities can vary, returns are not guaranteed and given that a high percentage of the assets are invested in equities, this poses a risk of capital loss."

"I've had a look at the 2024 factsheet for First NZ, Liontrust SF Managed 6 Acc and the fund aims to deliver capital growth over the long term by investing in a combination of global equities, bonds and cash. The asset breakdown shows that a higher percentage of the fund is invested in UK and global equities. Only 14% is invested in fixed interest in UK Gilts. So based on the asset class breakdown, Mr G was heavily weighted in equity-based investment, there was little or no diversification in lower risk asset classes to lower the risk."

"The First NZ, Lindsell Train Global Equity B GBP fund factsheet suggests that this fund aims to increase the value of shareholders capital over the long term from a focused, actively managed portfolio of global equities. It appears that 99.45% of the assets are invested in equity-based investments."

"I recognise that businesses have different opinions surrounding the risk of a portfolio however Mr G presented himself as a cautious investor, so an investment with some level of

guarantee such as a fund with a low proportion in shares and a higher proportion in cash, property, Gilts, could be considered more appropriate."

"…Whilst I'm unable to comments on SB's potential offer of redress, their email to Mr G on 20 May 2024 suggests that SB recognised that there have been some errors on their part. I don't think it's been demonstrated that the investment advice given was suitable, so I'm recommending SB put Mr G back in the position he would have been in, had it not been for the unsuitable advice."

Having reviewed the funds Mr G was recommended by Steven Barton, I see no reason to depart from the Investigator's summary here. However, while she concluded that it would've been suitable for him to have been 50% invested in equities, I don't think that is supported by the available evidence I've set out. I think a portfolio with 100% of his funds in lower risk products would've been appropriate.

Mr G had concerns about the level of charges applied to his funds. Steven Barton had previously undertaken to review these. In my provisional decision I noted that the redress proposed would allow for the effect of charges. So, just to confirm, this means I consider it fair to use the fixed rate bonds benchmark return set out below, as a measure of what Mr G's pension investment could've achieved net of charges
In responding to a recent follow-up view from the Investigator, Mr G noted:

"As mentioned in my complaint, in July 2023 SB incorrectly set up a 6 year investment with "risk" (MB7464) and didn't correct it as acknowledged and agreed. It therefore has potentially over 4 years to maturity with the risk that if the FTSE at maturity is less than 95% of the starting level, it will not achieve the 7.3% pa on an investment of £60k. It may kick out early in which case growth will be returned, but if it doesn't, and goes the full term without meeting the criteria, I will get no growth return (original capital is not at risk)."

I propose to deal with this matter as part of the approach to redress.

Putting things right

I'm upholding Mr G's complaint, so he needs to be returned to the position he'd have been in now, or as close to that as reasonably possible, had it not been for Steven Barton's failings.

If Steven Barton had provided suitable advice I think Mr G would've invested differently. It's not possible to say precisely what he would have done, but I am satisfied that what I have set out below is fair and reasonable given what we know from the available evidence about his circumstances, risk appetite and objectives in 2021 when the main transaction took place.

Steven Barton needs to provide redress as follows:

(i) Calculate the notional value for Mr G's pension funds as if they had been invested 100% in fixed rate bonds, from the date of investment, until the date of settlement.

Mr G wanted a cautious/defensive investment strategy. The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.

It does not mean that Mr G would have invested 100% of his money in a fixed rate bond. Rather, I consider this a reasonable proxy for the strategy Steven Barton should've recommended.

To arrive at the fair value when using the fixed rate bonds as the benchmark, it should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Apply those rates to the investment on an annually compounded basis.

Any additional sums Mr G has paid into the investment should be added to the fair value calculation from the point in time when it was actually paid in. And any withdrawal from the Standard Life SIPP should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on.

The information about the average rate can be found on the Bank of England's website by searching for 'quoted household interest rates' and then clicking on the related link to its database, or by entering this address www.bankofengland.co.uk/boeapps/database, clicking on: Interest & exchange rates data / Quoted household interest rates / Deposit rates - Fixed rate bonds / 1 year (IUMWTFA) and then exporting the source data.

There is guidance on how to carry out calculations available on our website, which can be found by following this link: https://www.financial-ombudsman.org.uk/businesses/resolving-complaint/understanding-compensation/compensation-investment-complaints. Alternatively, just type 'compensation for investment complaints' into the search bar on our website: www.financial-ombudsman.org.uk.

(ii) Assess the actual value of Mr G's SIPP. The main complication here may relate to any 'kickout' investments, where there maybe penalties or restrictions from leaving the product. So it may need to take on and/or crystalize these where they fall outside his cautious/defensive risk appetite and the agreement both parties had previously arrived at in terms of appropriate investments. If the product can't be crystalised or transferred, the base protected capital value should be used in the actual value calculation.

(iii) If the actual value is greater than the notional value, no compensation is payable. If the notional value is greater than the actual value, there is a loss and compensation is payable.

If there is a loss, it should pay into Mr G's pension plan, to increase its value by the amount of the compensation and any interest. Payment should allow for the effect of charges and any available tax relief.

It shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance. If Steven Barton is unable to pay the compensation into Mr G's pension plan, it should pay that amount direct to him.

But had it been possible to pay into the plan, it would've provided a taxable income. Therefore the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr G won't be able to reclaim any of the reduction after compensation is paid.

The notional allowance should be calculated using Mr G's actual or expected marginal rate of tax at his selected retirement age. It's reasonable to assume that Mr G is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr G would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

(iv) Provide the details of the calculation to Mr G in a clear, simple format.

Steven Barton has 28 days from the point at which Mr G accepts my decision to pay him any redress resulting from this calculation. After that it will need to add 8% simple annual interest to the sum outstanding.

Trouble and upset

When I'm considering a complaint like Mr G's I think about whether it's fair to award compensation for distress and inconvenience. This isn't intended to fine or punish a business – which is the job of the regulator. But when something's gone wrong, recognition of the emotional and practical impact can make a real difference.

We're all inconvenienced at times in our day-to-day lives – and in our dealings with other people, businesses and organisations. When thinking about compensation, I need to decide that the impact of a firm's actions was greater than just a minor inconvenience or upset. It's clear to me that this was the case here.

Steven Barton failed to invest Mr G in the correct funds. It's poor handling and service have caused him significant trouble and upset over an extended period affecting his retirement plans. He's also told us about the impact of these failings on his health. It should therefore pay Mr G £750 in recognition of this.

My final decision

I'm upholding Mr G's complaint for the reasons I've set out. I now require Steven Barton to put things right in the way I've directed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 6 June 2025.
Kevin Williamson
Ombudsman