DRN-3990505

The complaint

Mr H complains that AXG Advice Ltd (trading as AXG Asset Management Ltd at the time) advised him to invest his pension in funds that were unsuitable and not in line with his attitude to risk. Mr H says this has resulted in him suffering a financial loss.

Mr H also complains that the firm didn't deliver the ongoing review service that they had promised to provide.

What happened

I issued my provisional decision on this complaint on 9 February 2023. The background and circumstances to the complaint and the reasons why I was provisionally minded to uphold it were set out in that decision. I have copied the relevant parts of it below and it forms part of this final decision.

Copy of provisional decision

"One of our investigators considered Mr H's complaint. She sent her assessment of it to both parties in August 2022. The background and circumstances of the complaint and the reasons why she thought it should be upheld were set out in that assessment. However to recap, Mr H transferred the benefits from his former occupational pension scheme to a SIPP in 2019. At the time he was advised it was recorded that his Risk Profile was 4 out of 10 – "Lowest Medium".

Mr H was employed on a part time basis earning approximately £1,200 per month. His expenses were around £400 per month. He owned his own home which was worth around £200,000 (with a mortgage of £60,000). Mr H had £5,000 in his bank, and National Savings of £2,000. He had another pension plan valued at approximately £40,000.

Mr H was advised to transfer his pension to a Self-Invested Personal Pension (SIPP) and invest through AXG Asset Management Discretionary fund management (a DFM). He was recommended to invest in the AXG Asset Management Balanced Portfolio. The suitability report said this had a medium risk rating.

Mr H was charged a fee of £2,000 for the transfer analysis report and the firm's recommendation. This was payable whether Mr H acted on the recommendation or not. Mr H was also charged £7,500 for arranging the transfer, and an ongoing management charge of 1% (in addition to the SIPP fees).

The investigator explained that Mr H was happy with the advice to transfer and wasn't complaining about that. So she'd focussed on whether Mr H's pension had been invested in line with his attitude to risk, and if he'd received the ongoing service that he'd paid for.

The investigator noted the suitability report said that the AXG Asset Management Balanced Portfolio that Mr H had been invested in had a medium risk rating. She said she had looked at the risk profile report questionnaire completed by Mr H prior to the transfer. This gave his attitude to risk as 'Risk Profile 4 of 10 – Lowest medium'.

However the investigator had considered the responses that Mr H had given in the risk profile questionnaire. These included:

'To achieve financial success, I would take financial risks – Disagree

I am the kind of person who takes financial risks - Strongly disagree

I prefer certainty about the future value of my investments, even if it means making less money – Agree

Rises and falls in the value of my investments would not worry me – Disagree

If the value of my investment fell, even for a short time, it would concern me – Agree

I would generally avoid investments whose values rise and fall over time – Agree

I would frequently choose investments offering a steady return rather than those which could rise a lot in value – Agree

The statement about risk-taking that best describes me is: I very rarely take risks'.

The investigator said given Mr H's responses to the questions asked, she thought he should have been classified as a maximum of Risk Profile 3 – Low. She said his responses showed he wasn't a risk taker and didn't feel comfortable taking risks. She said his responses weren't those of someone who should be put in a medium risk fund.

The investigator said she thought the description in the suitability report given about 'Risk Profile 3 of 10 – Low' much more accurately fitted with Mr Hs feelings and thoughts about risk and the amount of risk he was prepared to take with his pension.

The investigator didn't think there was any evidence to suggest that Mr H needed a DFM arrangement, over and above what he could have obtained by AXG giving him ongoing advice on the underlying investments, for the extra costs he was incurring. She thought the DFM arrangement added an unnecessary layer of complexity that Mr H didn't need. She said Mr H wasn't a sophisticated or experienced investor, and didn't have the necessary knowledge to understand the bespoke investment propositions a DFM arrangement would give to him. The investigator said she didn't think that a wider range of funds or a bespoke investment portfolio were necessary to meet Mr H's objectives.

Overall, the investigator didn't think a DFM arrangement was suitable for Mr H or in his best interests. And she didn't think it had been made clear to Mr H that he was paying for a DFM arrangement that wasn't a necessity.

At the time of advice Mr H had an existing pension which was invested in a cautious fund. The investigator said she thought this was in line with Mr H's attitude to risk. Mr H had subsequently transferred his pension with AXG to this pension in February 2022, as it was more appropriate for his attitude to risk.

The investigator thought that if AXG had originally recommended that Mr H transfer his pension into his existing pension, he would likely have done so. She said one of Mr H's objectives was consolidation of pension funds, but she couldn't see that this had been considered as an option.

The investigator said the suitability report explained the £2,000 fee would be paid whether or *not Mr H went ahead with the transfer. So if the adviser had recommended transferring to his existing pension, Mr H would still have had to pay the £2,000 fee. She was satisfied that was fair for the work that was done.*

However she said she thought the £7,500 AXG Asset Management DFM Initial fee for arranging the transfer should be refunded to Mr H, as if he had been given correct advice to transfer to his existing pension he wouldn't have had to pay this.

The investigator said she thought that AXG had provided the annual review service. She acknowledged there had been some errors made, but overall she thought the 1% charge was fair and reasonable.

Taking everything into account, the investigator thought the fund recommended was too high risk for Mr H and the DFM was unnecessary. She thought that on transfer Mr H should have been advised to invest in the cautious fund of his existing pension. She said this would have met Mr H's objectives, for less cost and within his attitude to risk.

AXG didn't agree with the investigator's assessment. It said, in summary, that Mr H was advised about the DFM, its benefits and its fees were shown in the report which was provided to Mr H. Mr H had been receiving an ongoing service and had discussed the state of the markets with the adviser. Following such a discussion Mr H had wanted to switch the pension which had been carried out.

AXG didn't think the £7,500 fee for the advice and arranging the transfer should be refunded given that Mr H had said he was happy with the transfer itself. It also said once the Attitude to Risk (ATR) questionnaire and report had been completed Mr H's ATR had been discussed with him, and Mr H had agreed with it.

What I've provisionally 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.

Having done so, I've come to the same conclusions as the investigator that Mr H's complaint should be upheld, and largely for the same reasons. However I think fair compensation should be calculated slightly differently.

AXG Advice Ltd has said it had advised Mr H about the benefits and costs of a DFM. And that it had discussed Mr H's ATR with him and it had been agreed. However AXG were bound by the rules set out in the Financial Conduct Authority's Conduct of Business Sourcebook (COBS). And one of its primary responsibilities was outlined in COBS Rule 9.2, which effectively was to provide suitable advice.

Like the investigator, I think the AXG Asset Management Balanced Portfolio presented a higher degree of risk than Mr H should have been recommended to take. Mr H's answers to the risk questionnaire clearly showed he was only comfortable with a limited degree of risk. However the adviser himself described the fund as medium risk. And that its objective was to provide returns of between 5 and 7% after all charges. The fund factsheet said the target return was 8%. In my opinion the asset content of the Balanced Portfolio exposed Mr H to a greater degree of risk than he'd indicated he was willing to take. So for this reason and those outlined by the investigator above, I don't think the portfolio was suitable in the particular circumstances.

Mr H hasn't complained about the transfer itself. My understanding is that the £2,000 fee was payable for the recommendation/report. And the £7,500 fee was payable to arrange the *transfer. My aim, in assessing what would be fair compensation, is to put Mr H as close as possible to the position he would probably now be in if he had been given suitable advice.*

Given Mr H is happy with the transfer itself and so the firm would have arranged it, albeit, for the reasons set out it should have been to a different provider/fund, I currently don't think the £7,500 should be refunded back to Mr H. The two fees paid equate to around 2% of the transfer value, which I think is comparable with fees charged by other firms doing this type of work.

The loss calculation methodology I have outlined below will compare Mr H's position with the position he would have been in had he been invested in the cautious fund from the off. So I think that puts him back into the right position. However if Mr H had to pay any additional charges when he subsequently switched the pension in 2022, I think those charges should be refunded. Mr H should provide us with information about this when responding to this decision."

Accordingly, my provisional decision was to uphold Mr H's complaint. I went onto outline how I thought AXG Advice Ltd should calculate and pay fair compensation.

I asked Mr H and AXG Advice Ltd to let me have any further evidence or arguments that they wanted me to consider before I made my final decision.

Mr H said he noted I didn't think the set-up fee was unreasonable. However he said it was never made clear to him what options he had. Mr H said he was, however, happy to accept the decision to compensate him the value of his fund had it been moved to his other pension's cautious fund which would have been his preferred situation.

AXG Advice Ltd said that as part of its defined benefits transfer process and before any transfer work was completed, it had a telephone conversation with Mr H to make sure that he was aware of and understood the risk on proceeding with the actual pension transfer. It also reconfirmed his attitude to risk with regards to investing the proceeds of the transfer – in particular because of his responses to the risk profiling questionnaire (as I outlined above).

It said during the phone call Mr H was made aware of the risks involved and that there was no certainty at all when transferring away from a defined benefits scheme. It said it explained Mr H would have to be prepared to accept the risk and to have no certainty.

If said if it had come to light at the risk profiling stage that a Cautious fund/ portfolio was better suited to Mr H and the need of certainties, then the advice would have been not to transfer as staying in a defined benefit scheme would have been better suited for him. AXG Advice Ltd said it believed that it hadn't provided bad advice to Mr H.

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.

Having done so, I've seen no reason to depart the conclusions I reached in my provisional decision to uphold Mr H's complaint.

When making his complaint Mr H said he thought the fund was invested inappropriately as he'd made it clear at outset that he wished to invest in low-risk investments. That is consistent with the contemporaneous evidence – the answers recorded in the risk profiling questionnaire that was completed.

AXG itself recorded Mr H's risk profile as 4 out of 10 and described that as lowest medium. In responding to Mr H's complaint it said it considered the AXG Asset Management Balanced Portfolio wasn't high risk in nature and it believed it *was "… in line with your risk rating."*

So I think any telephone conversations explaining the risks of the investment would have been based on AXG's belief that the risks presented by the AXG Asset Management Balanced Portfolio were in line with his lowest medium risk rating.

However even if I accept that was an accurate assessment – given the answers Mr H provided clearly showed he was only comfortable with a limited degree of risk, I think lowest medium would be at the very top of the acceptable level of risk - as I explained in my provisional decision, the adviser himself described the fund as medium risk. And that its objective was to provide returns of between 5 and 7% after all charges. The fund factsheet said the target return was 8% - more consistent with the regulator's higher projection rate. In my opinion the asset content of the AXG Asset Management Balanced Portfolio exposed Mr H to a greater degree of risk than he'd indicated he was willing to take or had likely been explained to him.

My final decision

My final decision is that I uphold Mr H's complaint.

I order that AXG Advice Ltd calculates and pays compensation to Mr H as I set out below.

Fair compensation

As I've said above, in assessing what would be fair compensation, my aim is to put Mr H as close as possible to the position he would probably now be in if he had been given suitable advice.

I think Mr H would have invested differently. I think he would have transferred to his other pension and invested in the cautious fund he was already invested into. So I think what I have set out below is fair and reasonable given Mr H's circumstances and objectives when he invested.

What should AXG Advice Ltd do?

To compensate Mr H fairly AXG Advice Ltd should:

- Compare the performance of Mr H's investment with that of the benchmark shown below. If the fair value is greater than the actual value, there is a loss and compensation is payable. If the actual value is greater than the fair value, no compensation is payable.

- AXG Advice Ltd should also pay any interest set out below.

- If there is a loss, AXG Advice Ltd should pay it into Mr H's pension plan, to increase its value by the amount of the compensation and any interest. AXG Advice Ltd's payment should allow for the effect of charges and any available tax relief. AXG Advice Ltd shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.

- If AXG Advice Ltd is unable to pay the compensation into Mr H's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have 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 H won't be able to reclaim any of the reduction after compensation is paid.

- The notional allowance should be calculated using Mr H's actual or expected marginal rate of tax at his selected retirement age. It's reasonable to assume that Mr H is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr H 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%.

- Provide details of the calculation to Mr H in a clear, simple format. Income tax may be payable on any interest paid. If AXG Advice Ltd consider that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr H how much it's taken off. AXG should also give Mr H a tax deduction certificate in respect of interest if Mr H asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Actual value

This means the actual amount payable from the investment at the end date.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

Any additional sum paid into the investment should be added to the fair value calculation from the point in time when it was actually paid in.

Any withdrawal from the plan 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. If there are a large number of regular payments, to keep calculations simpler, I'll accept if AXG Advice Ltd total all those payments and deduct that figure at the end to determine the fair value instead of deducting periodically.

Investment	Status	Bench mark	from ("start date")	to ("end date")	additional interest
SIPP	switched	the cautious fund available in Mr H's other pension	Date of initial transfer	Date of subsequent switch	The same benchmark on the loss calculated as at switch date to decision date. Then 8% simple a year from date of decision to date of settlement if settlement isn't made within 28 days of AXG being notified of Mr H's acceptance of this decision

Why is this remedy suitable?

I've chosen this method of compensation because I think the fund used for the benchmark is aligned to Mr H's attitude to investment risk. It provides capital growth with a limited risk to his capital.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 5 April 2023.

David Ashley
Ombudsman