DRN-4294927

## The complaint

Mr H complains about investment advice he received from Bank House Consultants Ltd. He thinks the advice was unsuitable for his circumstances as it didn't match his attitude to risk.

## What happened

Mr H was an advisory client of BH. In May 2020 their advisor recommended that he sell the underlying holdings in his ISA and SIPP portfolios and move the funds to gold and cash due to the volatile economic climate at the time. Mr H accepted their recommendation, and the changes were made to his portfolios.

Mr H complained to BH in 2021 about the advice he received. He said, in summary, that the recommendation wasn't explained adequately and was generic, rather than tailored to his circumstances.

BH looked into his concerns but didn't uphold his complaint. They thought that at the time, global markets were volatile and there was no absolute certainty as to when stability would return. With this in mind, they'd proposed that Mr H should alter his portfolio structure and concentrate on gold and cash as defensive holdings. They noted that Mr H had accepted their proposal and his actions at the time, including evidencing his research into the gold market, showed that he had a good understanding of the gold market and its potential risks.

Mr H didn't accept their findings and asked us to help. He thought that BH had made a blanket recommendation to all their clients, and it didn't fit his speculative risk profile. He also highlighted areas where he'd received poor service from BH including:

- Investing £50,000 across his portfolio when he'd told them to keep the funds as cash.
- Investing £60,000 in a US Dollar fund despite not discussing or explaining the investment with him.
- Not investing in a renewable energy fund after he'd had a discussion with them about the investment and agreed to it.

The complaint was considered by one of our investigators who didn't uphold it. He didn't think BH invested without Mr H's knowledge or consent. He wasn't of the opinion that just because BH sent the same advice to other customers automatically meant it was unsuitable for Mr H. He thought that BH's adviser had informed Mr H that he felt moving to safer investments would protect Mr H's funds. And given the effects of the pandemic and the volatility seen at the time, this wasn't unsuitable.

The investigator didn't think there was any evidence to suggest that BH had provided Mr H with poor service. He noted that BH had provided emails which showed that Mr H had agreed to and thanked them for the £50,000 investment in February 2020. And they'd also provided evidence from September 2020 to show they'd advised Mr H to invest in an energy fund but hadn't received a response.

Mr H didn't agree with the investigator's findings. He thought that his individual objectives and requirements hadn't been considered, he hadn't received tailored advice and at no point were the consequences of the strategy explained. He also provided an email BH's adviser had sent him in February 2021 asking him why he'd complained despite the adviser agreeing to pay him £10,000.

The investigator wasn't persuaded to change his opinion so the complaint was passed to me to decide. I recently issued a provisional decision where I said:

*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 think this complaint should be upheld and I will now explain why. I've firstly considered the nature of Mr H's relationship with BH. From what I've seen there was a long-standing advisory relationship between both parties. Mr H was invested in BH's model portfolio 8 which was classed as speculative. In 2019 his asset split was as follows - 40% UK equities, 30% global equities, 10% gold, 9% multi-asset, 6% property, 4% absolute return, 1% cash. I think that this shows that Mr H was willing to take a significant degree of risk with his ISA and SIPP.*

*BH have said that the advice they gave Mr H in 2020 to move into low-risk holdings was because of the uncertainty that global markets were experiencing at the time. They've said that they had a discussion with Mr H prior to his acceptance of the proposal and think that his email response confirming his acceptance where he said - 'Great proactive work!!!' - shows that he had sufficient understanding of their recommendation.*

*BH had a responsibility to ensure that any advice they gave Mr H was suitable for his circumstances and objectives. I think that because of the existing relationship it wasn't unreasonable for Mr H to expect that any advice BH gave to him was suitable. It also doesn't seem unreasonable that he would have followed any advice he was given, especially at a time of significant market volatility.*

*But I haven't seen that BH reviewed his circumstances or sought any information from him prior to making the recommendation. The very nature of a speculative attitude to risk (ATR) means that an investor is prepared to take a significant risk of fluctuations in the value of their investment in order to try and achieve higher returns. I think a recommendation to move his entire holdings into gold and cash, even taking into account the volatility in the markets, was contrary to his objectives and ATR.*

*The advice didn't mention any of the risks associated with moving into gold and cash at that point. There was nothing in BH's emails about the disadvantage of crystallising any losses already incurred by leaving the market, missing out on any potential upturn or a plan to return to the markets. Therefore, I think the advice wasn't balanced and it isn't surprising that Mr H accepted the recommendation.*

*I think that if BH had properly considered Mr H's circumstances and fully explained the implications of their recommendation then it's more likely than not that he would have chosen to keep his investments as they were. I say this because of his speculative ATR and how he'd chosen to structure his holdings since he'd been receiving advice from BH. From what I've seen he had always been prepared to accept fluctuations in value and maintained a fairly high equity content in his portfolio, even during previous periods of volatility.*

*I've also considered the other points Mr H has raised about the poor service he's received. I haven't seen any evidence to show that BH invested £50,000 when he'd told them not to or that they invested £60,000 in a US Dollar fund without explaining their rationale to him. But I* *think that the content of BH’s email from February 2021 implies that they’ve done something wrong as they had offered to pay Mr H £10,000. But because I think that Mr H’s portfolio should have remained as it was prior to the advice to move into cash and gold, I think the fairest way to put things right would be for BH to calculate if Mr H has lost out as a result of their advice as set out below.*

***Fair compensation***

*In assessing what would be fair compensation, I consider that my aim should be to put Mr H as close to the position he would probably now be in if he had not been given unsuitable advice.*

*I take the view that Mr H would have remained with the previous investments he held prior to the switch to cash and gold holdings in May 2020. I’m satisfied that what I’ve set out below is fair and reasonable in this situation.*

***What must BH do?***

*To compensate Mr H fairly, BH must:*

- *Compare the performance of Mr H's investments with the notional value if he had remained with the previous investments. 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 of the difference between the notional and actual values is payable.*

- *BH should also add any interest set out below to the compensation payable.*

- *If there is a loss on his SIPP portfolio, BH should pay into Mr H's pension plan to increase its value by the amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.*

- *If BH 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 higher rate taxpayer at the selected retirement age, so the reduction would equal 40%. 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 30%.*

- *If either BH or Mr H dispute that this is a reasonable assumption, they must let us know as soon as possible so that the assumption can be clarified and Mr H receives appropriate compensation. It won’t be possible for us to amend this assumption once any final decision has been issued on the complaint.*

- *Income tax may be payable on any interest awarded*

| *Portfolio name* | *Status* | *Benchmark* | *From ("start date")* | *To ("end date")* | *Additional interest* |
|---|---|---|---|---|---|
| *ISA* | *No longer in force* | *Notional value from previous investments* | *Date of switch into cash and gold funds* | *Date ceased to be held - when Mr H moved his investments away* | *8% simple per year on any loss from the end date to the date of settlement* |
| *SIPP* | *No longer in force* | *Notional value from previous investments* | *Date of switch into cash and gold funds* | *Date ceased to be held - when Mr H moved his investments away* | *8% simple per year on any loss from the end date to the date of settlement* |

***Actual value***

*This means the actual amount paid from the investment at the end date.*

***Notional Value***

*This is the value of Mr H's investment had it remained as it was prior to the move to gold and cash until the end date.*

*Any additional sum that Mr H paid into either investment should be added to the notional value calculation at the point it was actually paid in.*

*Any withdrawal from the ISA or SIPP should be deducted from the notional 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 is a large number of regular payments, to keep calculations simpler, I'll accept if BH totals all those payments and deducts that figure at the end to determine the notional value instead of deducting periodically.*

**Responses to my provisional decision**

BH responded and made the following points:

- Mr H was an experienced investor and was fully aware of risk and reward, happy to switch money around as required to make it work and protect it in uncertain times.

- He was sent the recommendation to withdraw from the equity component of his portfolio in May 2020 and contrary to the decision, the Property/Multi-Asset/Absolute return components totalling 20% of the portfolio as well as gold remained.

- Mr H researched gold extensively himself and concurred with the recommendation using the phrase *'Great proactive work*'. This response showed he agreed with the recommendation. He was at liberty to reject the recommendation and the portfolio would have remained untouched.

- They believed Mr H to be upset because he made a choice which in hindsight didn't go in his favour. It followed that had the portfolio performed well, he would have been happy.

- The statement *"I think a recommendation to move his entire holdings into gold and cash, even taking into account the volatility in the markets, was contrary to his objectives and ATR."* assumed that Mr H wasn't allowed to make variations in light of mid 2020 events. This again showed the benefit of hindsight and Mr H's agreement to the recommendation shows that at least a temporary change in objectives was in his mind at the time.

- Mr H had received a strong level of service from BH as supported by the evidence on file.

Mr H responded and said:

- He is a basic rate taxpayer and this has been the situation for several years now and at retirement he will still be a basic rate taxpayer. He would have been able to take a tax-free lump sum, so the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

- Concerning the notional value calculation there was an additional lump sum of £40,000 added to the SIPP in March 2021 and this should be considered in the notional value calculation, as it disguised and masked the magnitude of the actual loss, incurred at the end date. There were no withdrawals from either investment.

**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.

After reconsidering the available evidence including the new submissions from both parties, I'm not persuaded to depart from my provisional outcome, I will now explain why.

I note the points BH have raised regarding Mr H's level of experience and the research he carried out into gold. I've carefully thought about what they've said, but the only evidence of research into gold I've seen is a link to an article Mr H sent to his advisor at BH. In his email, he also asked where he could find unbiased, balanced investment advice. I don't think this demonstrates extensive research and certainly doesn't absolve BH of their responsibility to provide suitable advice to Mr H.

I don't think it's unreasonable to say that even during times of market volatility, a business must ensure that a recommendation is suitable for their client. They must also ensure that their recommendation meets their client's objectives, and the client understands the risks involved. As I've said in my provisional decision, I haven't seen where Mr H - who was classified as having an adventurous ATR - was advised of the risks associated with moving into gold and cash at that point and the impact of crystallising any losses already incurred by leaving the market. Therefore, in my opinion the recommendation was imbalanced, and I'm not satisfied that Mr H was given enough information to make an informed decision.

I accept that Mr H was free to reject the recommendation. But as he'd been BH's client for a number of years, I don't think it was unreasonable for him to expect that any recommendations made to him were suitable for his circumstances. During a time of such volatility in the markets, it's only natural for an investor to heavily rely on their professional advisor.

I think that if the advisor had properly considered Mr H's objectives, ATR and fully explained the downsides of the proposed strategy then it's more likely than not that Mr H wouldn't have accepted the recommendation given his overall investment objectives. I think that his profile is indicative of an investor who is willing to accept short term loss in the pursuit of long term gains. The advice to move into cash and gold indefinitely, without a proper explanation of the risks involved, is at odds with that profile and therefore unsuitable.

I note the points BH have raised about only the equity element of Mr H's portfolio being sold. I accept what they've said but this doesn't change my opinion. The end result of the advice was that Mr H's equity holdings - 70% of his portfolio - was moved to cash and gold funds which, for the reasons I've previously given, was unsuitable for his circumstances at the time. Therefore, BH needs to calculate if there's been any financial loss and put things right if there has been.

I've noted the points Mr H has raised about his tax status and amended the redress calculation accordingly. The calculation already accounts for additional payments, so no amendment is required for the lump sum he added in March 2021.

**Putting things right**

- Compare the performance of Mr H's investments with the notional value if he had remained with the previous investments. 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 of the difference between the notional and actual values is payable.

- BH should also add any interest set out below to the compensation payable.

- If there is a loss on his SIPP portfolio, BH should pay into Mr H's pension plan to increase its value by the amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

- If BH 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.

- If Mr H has remaining tax-free cash entitlement, 25% of the loss would be tax-free and 75% would have been taxed according to their likely income tax rate in retirement – presumed to be 20%. So making a notional reduction of 15% overall from the loss adequately reflects this.

- Income tax may be payable on any interest awarded

| Portfolio name | Status | Benchmark | From ("start date") | To ("end date") | Additional interest |
|---|---|---|---|---|---|
| ISA | No longer in force | Notional value from previous | Date of switch into cash and | Date ceased to be held - when Mr H | 8% simple per year on any loss from |

| | | | | | |
|---|---|---|---|---|---|
| | | investments | gold funds | moved his investments away | the end date to the date of settlement |
| SIPP | No longer in force | Notional value from previous investments | Date of switch into cash and gold funds | Date ceased to be held - when Mr H moved his investments away | 8% simple per year on any loss from the end date to the date of settlement |

**Actual value**

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

**Notional Value**

This is the value of Mr H's investment had it remained as it was prior to the move to gold and cash until the end date.

Any additional sum that Mr H paid into either investment should be added to the notional value calculation at the point it was actually paid in.

Any withdrawal from the ISA or SIPP should be deducted from the notional 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 is a large number of regular payments, to keep calculations simpler, I'll accept if BH totals all those payments and deducts that figure at the end to determine the notional value instead of deducting periodically.

If BH are unable to calculate a notional value, they will need to determine a fair value for Mr H's investments instead using this benchmark: FTSE UK Private Investors Income Total Return Index. The adjustments above also apply to the calculation of a fair value using the benchmark, which is then used instead of the notional value in the calculation of compensation.

**My final decision**

I uphold the complaint. Bank House Consultants Limited must redress Mr H as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 27 September 2023.

Marc Purnell
**Ombudsman**