

The complaint

Mr H is unhappy with the performance of his pension investments since he was advised to switch to a more expensive portfolio by Ascot Wealth Management Limited (AWM).

What happened

The investigator set out the background to the complaint in his recommendation letter, I have included an amended copy of this below for ease of reference:

AWM have been providing Mr H with ongoing financial advice for his Standard Life Self-Invested Personal Pension (SIPP) since 2018. Mr H was satisfied with AWM's advice during the time prior to the complaint issue at hand.

In December 2019, Mr H met with AWM, and they advised he switch from his existing AWM 3 portfolio to a new CBAM III portfolio. The switch also included a Discretionary Fund Management agreement which meant the overall cost to Mr H was higher.

Mr H was reluctant to pay more for the additional service, so he requested AWM refund the difference if his new investment didn't outperform his old portfolio by at least the increase in charges. AWM agreed to the proposal and Mr H proceeded with his new arrangement.

On 15 May 2020, Mr H signed a Discretionary Management Agreement to allow his SIPP investments to be managed on a discretionary basis. Mr H also signed a discretionary fund management fee agreement the same day which agreed a rebate in the event his new portfolio didn't outperform his previous portfolio by at least the increase in fees during the first two years.

In December 2023, AWM contacted Mr H to arrange a review meeting for January 2024. Mr H requested a comparison of the performance of the AWM 3 and CBAM III portfolios ahead of the meeting. On 18 January 2024, AWM provided Mr H with a comparison of the performance for 2023 and proposed Mr H move to a more passive strategy due to the performance of the CBAM III portfolio.

Mr H then requested a full comparison of the two portfolios over the past three years. On 19 January 2024, AWM provided a comparison of the AWM 3 and CBAM III portfolios since he switched. As this comparison demonstrated the CBAM III portfolio had underperformed, Mr H raised a complaint with AWM on 21 January 2024.

As part of the complaint response, AWM agreed to honour their agreement with Mr H

dated 15 May 2020 and reimbursed him £438.21. AWM also offered him £500 as a goodwill gesture but took no responsibility for the relative poor performance of the CBAM III portfolio. Mr H requested the termination of his agreement with AWM which was confirmed in writing on 23 February 2024.

Mr H is unhappy with the underperformance of the CBAM III portfolio when compared with the AWM 3 portfolio. Mr H feels he was guaranteed the higher cost associated with the

portfolio switch would translate into a much better performance. Mr H believes the poor performance is a result of the mismanagement of his investments by AWM.

Mr H is also unhappy with the length of time and the amount of effort it took for him to obtain comparative performance data for the AWM 3 and CBAM III portfolios. Mr H feels he should've been given regular updates about the comparative performance of his new portfolio with the one he had agreed to switch from, and been advised to switch back once it became apparent it was underperforming.

Our investigator looked into matters and upheld the complaint. He concluded that acting reasonably AWM ought to have reviewed the performance between the two portfolios at the two year mark. Had they done so, Mr H would've wished to switch back to the AWM 3 portfolio and therefore the complaint should be upheld on this basis.

AWM strongly disagreed with the investigator's findings, in summary it said:

- The agreement didn't mean that there would be a two year compulsory review period.
- The agreement was a sub agreement, Mr H had signed up to the new DFM which is the core agreement and has clear terms on termination.
- The agreement wasn't a performance guarantee.
- It couldn't run a DFM at the cost of the AWM 3 portfolio and Mr H received many benefits as part of the DFM that he wouldn't have received in the AWM 3 portfolio which was an advisory service.
- Mr H had a history of missing rebalances so the advisory service couldn't be compared with the performance of the DFM – as we'd have to assume he would have accepted these.
- It feels we are holding the adviser responsible for market risk.
- The bespoke agreement was a clear refund if hypothetical conditions were met – it had no legal guarantees and the funds he was invested in did a good job in any event.
- Mr H even rejected a review in the period as he was happy with returns.
- It sent a screenshot which it said evidenced that Mr H had a history of not accepting rebalances and therefore if not in a DFM, he may not be in a suitable portfolio.

Further points were made about the service it provided and how informed the client was with the DFM service and the minimal cost of the DFM arrangement (these points are not particularly relevant as the investigator said there was nothing unsuitable about the arrangement).

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 agree with the outcome reached by the investigator and for broadly the same reasons.

As I said above AWM's responses have in part focused on the validity of the DFM agreement and the suitability of the advice provided regarding that. But this is not being questioned. Its responses have also focussed on the agreement itself not being legally binding in terms of providing a compulsory review or being a comparison of performance at all. It was simply to refund the difference in fees if the DFM didn't outperform the old portfolio. Again that is not in dispute. However, AWM is required to act in the best interests of its clients, and we decide cases on a fair and reasonable basis, taking into account the law but we are not bound by it. So the lack of a specific point in the agreement to say a review will be carried out after two years, doesn't necessitate that we won't uphold this

complaint.

The agreement itself was a bespoke agreement set up because it seems Mr H was reluctant to move his investments into a more expensive arrangement. The agreement is shown below:

We have agreed to enter into a bespoke fee arrangement for your movement from your current allocation in your Ascot Wealth Management (AWM) portfolio to a Cape Berkshire Asset Management (CBAM) portfolio.

You have agreed to move to the CBAM portfolio of the equivalent risk level to your current AWM portfolio, this will be a movement from the AWM 3 portfolio to the CBAM 3 portfolio. This move will be made under the condition that if the CBAM 3 portfolio underperforms the AWM 3 portfolio **or** outperforms the AWM 3 portfolio by less than the increase in fees over the below specified periods Ascot Wealth Management will rebate the monetary difference in fees to you.

This agreement will stand for the next two years, starting 14/04/2020, and will be measured on an annual basis.

Cost Differential

The difference in cost between the portfolios will not remain static; therefore for the purpose of this agreement the current fee structure of the portfolios will be used for the first year. For the second year of this agreement we will use the fees of the two portfolios as at 14/04/2021. Please see Appendix 1 for the current cost comparison of AWM 3 & CBAM 3 that will be used for the first year of this agreement.

As highlighted in Appendix 1 it is possible that the portfolios will acquire a VAT exemption in the near future. VAT is not currently charged on the DFM fee under the assumption that it is not payable. We are confident it will not be payable, however we are awaiting final confirmation from HMRC on this. In the unlikely event that HMRC deem VAT is payable on the 0.25% DFM fee this will be taken in retrospect by HMRC from your SIPP. Further details on this can be found in the Discretionary Management Agreement.

Rebate

In the event that a rebate is due under this agreement, either on the first or second anniversary of this agreement the following terms will apply to it:

- The rebate made will be based on the cost differential defined above and the portfolio value at each anniversary of this agreement.
- The rebate will be made in the form of pausing of advisory fees on your SIPP.

However, it was only after AWM contacted Mr H about moving to another portfolio in December 2023, and after he complained following him asking for a comparison that AWM as part of the complaint response reviewed and offered to pay the difference in fees with interest added. I think acting in its customers best interests, AWM should have addressed this much earlier. Once the agreement was made, I think it was fair to expect that at the two year anniversary some sort of contact would've been made, given Mr H had doubts about moving his portfolio – which was the point of the agreement. Acting reasonably the adviser ought to have at the very least informed Mr H of the rebates and provided evidence of the comparative performance. His job as an adviser was to act for Mr H and in his best interests, I don't think in seemingly forgetting or ignoring the agreement this constituted fair treatment. It does seem Mr H also forgot about this agreement, so that may be some mitigation, but the adviser was the professional being paid to provide a service. Good practice and good customer service would've been to review the arrangement at the two-year period regardless of whether that formed part of the agreement/contract. I suspect this is what Mr H would've expected at the time.

I also agree with the investigator's view that had a review or discussion occurred around the two-year period or even Mr H had been given the information about the comparative performance and the rebates due, Mr H would most likely have wished to return to the portfolio he was reluctant to leave. And to the point this unusual bespoke arrangement was agreed.

Mr H's testimony is that he was reluctant to move to the DFM as it was a more costly

arrangement and the evidence backs this up. The evidence suggests he only moved on the basis that it was expected the new portfolio would outperform the old one, and the fee rebate agreed suggests Mr H likely saw this as a two year test. If someone was reluctant to switch and sought a potential rebate of the more expensive fees due to doubts about the move, it follows that being informed their doubts were confirmed that they'd look to make a change. I do not believe it's likely that if Mr H had been kept better informed of the performance between the two portfolios that at the two-year mark when he should've been given the rebates, that he would've wanted to stay in the comparatively underperforming DFM.

AWM has questioned whether Mr H would've wished to move back to the old portfolio but for the reasons explained above, I think he would have. Obviously, there is no way we can be sure but I do think it's likely on the balance of probabilities. And it should be stated that the reason we are having to look at this hypothetical situation is because AWM didn't stick to what it said it would do. Had it done so, we would likely know the answer for definite as action ought to have taken place at the two-year anniversary – that either would've prompted Mr H to ask for his funds to be switched or not.

AWM has also questioned whether it is a fair comparison as Mr H had a history of not accepting rebalances. But the example it sent was him asking what a rebalance was when he was attempting to cancel his servicing with AWM after his complaint – and saying he just wished to get out of the arrangement. In this context it's not surprising he didn't accept the rebalance. Furthermore the redress might not always be perfect and exactly like for like as we cannot say for sure what would've happened in the future but we can provide a solution that is most likely, workable and sensible in the circumstances. And to put a customer in as close a position as possible as if the error hadn't occurred. I can't say whether he would've accepted rebalances in the future if he'd been in the AWM 3 portfolio but I've no reason to believe he wouldn't have with proper engagement and explanation from the adviser. And I think this is a fair and reasonable solution. AWM was able to model the performance between reality whilst Mr H was with them and the benchmark of AWM 3. So It can do this for the redress the investigator set out and which I am endorsing.

AWM has also said it cannot complete the redress as Mr H has made withdrawals but this does not stop a comparison being made. This is often the case in comparisons we ask businesses to carry out and it is possible to factor these into the notional calculation, if AWM is unable to do so itself it should seek the help of a suitably qualified actuary. In the putting things right section I'll give a bit more detail regarding this.

AWM had agreed to pay the redress for the agreement it made plus interest and £500 for the distress and inconvenience caused. I see no reason to amend this or make an additional award for this part of the complaint as it seems fair and reasonable.

However, for the reasons I've explained AWM also needs to provide redress as if Mr H had returned to the AWM 3 portfolio until he terminated his servicing with AWM. It may need to contact the current provider to get the relevant information to carry out this calculation and Mr H will likely be required to facilitate it getting this information. I expect him to do so promptly if required.

Putting things right

Fair compensation

My aim is that Mr H should be put as closely as possible into the position he would probably now be in if he AWM had acted fairly.

I take the view that Mr H would have invested differently. It's not possible to say *precisely*

what he would have done differently. But I'm satisfied that what I've set out below is fair and reasonable given the circumstances.

What must AWM do?

To compensate Mr H fairly, AWM must:

- Compare the performance of Mr H's investment with that of the benchmark shown below to current date. The purpose of this calculation is to compare if Mr H had been invested in AWM 3 instead of CBAM III from the date two years after the agreement started for the period invested in CBAM III until the servicing with AWM was terminated and any losses to be calculated up to the date of calculation. If the actual value is greater than the fair value, no compensation is payable. If the fair value is greater than the actual value there is a loss and compensation is payable.
- AWM should also add any interest set out below to the compensation payable.
- AWM should pay into Mr H's pension plan to increase its value by the total 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 AWM is unable to pay the total amount 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 total amount 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* reduction of tax if Mr H is entitled to take tax-free cash, 25% of the loss would be tax-free and 75% would have been taxed according to Mr H's likely income tax rate in retirement – presumed to be 20%. So making a notional reduction of 15% overall from the loss adequately reflects this.
- Pay to Mr H £500 (if it hasn't already been paid) for the distress caused by the lack of attention given to the agreement after it had been made. Finding out he would've been better off in the fund he likely would've been in had AWM been proactive, will have been upsetting – as Mr H believes he's made a large loss.
- Pay Mr H the £438.21 reimbursement if this hasn't already been paid.
- AWM should provide details of the calculation and how any loss/gain was calculated to Mr H in an easy-to-understand format.

Income tax may be payable on any interest paid. If AWM deducts income tax from the interest it should tell Mr H how much has been taken off. AWM should give Mr H a tax deduction certificate in respect of interest if Mr H requests this.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
-----------------	--------	-----------	---------------------	-----------------	---------------------

Mr H's SIPP	Exists and liquid	AWM 3 until Mr H's servicing with AWM was terminated. Going forward mirror actual investment performance to bring calculation up to date.	Date two years after the agreement – which was the end date for the rebates.	Date of calculation	If payment of compensation is not made within 45 days of AWM receiving Mr H's acceptance of my final decision, interest should be added to the compensation at the rate of 8% per year simple from the date of my final decision to the date of payment.
-------------	-------------------	---	--	---------------------	--

Actual value

This means the actual amount of 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, income or other distributions paid out of the investment 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 is a large number of regular payments, to keep calculations simpler, I'll accept if AWM totals all those payments and deducts that figure at the end.

Why is this remedy suitable?

I've decided on this method of compensation because:

If AWM had proactively communicated with Mr H I believe he would've switched back to the AWM 3 portfolio rather than continue in the comparatively underperforming CBAM III.

My final decision

For the reasons explained I uphold this complaint and require Ascot Wealth Management Limited to put things right 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 August 2025.

Simon Hollingshead
Ombudsman