DRN-4260881

The complaint

Mr L complains about the advice given by AXG Advice Ltd ('AXG') to transfer the benefits from his occupational pension scheme to a self-invested personal pension ('SIPP'). He says the advice was unsuitable for him.

What happened

Mr L held benefits in a workplace pension and in January 2021 he obtained a summary of those benefits from the scheme administrator. His pension was split into three parts. 'Part one' was a defined benefit pension. This had a cash equivalent transfer value ('CETV') of £664,732. 'Part two' was another defined benefit ('DB') arrangement and had a CETV of £49,770. 'Part three' was a defined contribution ('DC') pension arrangement. This was valued, at that time, at £27,028.25. Part two and part three were both held under the same 'section' of Mr L's pension. The trustees of the pension have since explained that part one could be transferred separately to parts two and three. But if part two was transferred, Mr L was required to also move part three because these benefits were held under the same 'section' of the pension arrangement.

Mr L was discussing his finances with another business, which I'll call Firm S. He's said he was looking into his options regarding reducing or repaying his mortgage. He says Firm S explained the benefits of transferring his pension into a SIPP. But Firm S didn't have permission to advise on DB transfers. So, he was told he'd need to take advice from AXG.

A fact-find, recording information about Mr L's circumstances and objectives, was completed on 17 February 2021 and provided to AXG. This said Mr L was 52, divorced with two financially dependent children. He owned his own home, with an outstanding mortgage of £186,000. He also owned rental property which was mortgaged for approximately £114,000. No other debts or liabilities were recorded. Mr L was employed earning £61,500 plus variable bonuses. He also received income from his rental properties. He had savings and investments of approximately £33,400. And his income was noted as exceeding his outgoings by around £3,500 per month.

In addition to his workplace pension, Mr L had another SIPP, which was noted as having a value of £47,825.

The fact-find said Mr L hoped to retire from his current role at age 55. It said he wanted to take the maximum tax-free cash ('TFC') possible at that point and begin drawing a modest income which he'd supplement with the income from his rental property. And he also intended to take up another, less stressful job, to provide further income. So, it said, he was interested in transferring to a flexible pension. It also said Mr L was concerned about the funding level of his workplace pension and was thinking of transferring to safeguard his pension. And he was also keen to leave the pension to his children in the event of his death.

The fact-find included a section where Mr L was asked to rank a list of 11 priorities regarding his pension and retirement. And it included questions about Mr L's investment experience, attitude to and capacity for risk. Based on the answers given AXG determined that he had a 'low medium' attitude to risk or a 5 on a scale of 1-10.

On 9 March 2021, AXG sent Mr L its recommendation. The report said AXG was not considering the DC portion of his pension (part three) as this wasn't guaranteed nor did it provide guaranteed benefits. And its advice focused on the two DB parts of his pension (part one and part two). AXG said it recommended that Mr L transfer his DB benefits to a new provider. It noted that under the rules of the subsections of the DB scheme, early retirement appeared to only be possible from age 57. And retiring early would result in a significant reduction in benefits compared to those available at the normal retirement date. AXG said that a transfer allowed Mr L to meet his objectives.

The recommendation noted that Firm S had suggested a pension provider and product to which Mr L should transfer. AXG said, having reviewed this, it was satisfied this provider and product were in line with Mr L's attitude to risk and were suitable. The report noted that Firm S would act as Mr L's ongoing adviser, at a further ongoing cost.

I've been provided a recording of a call which took place between AXG and Mr L after this advice was provided but before the transfer was instructed, in which AXG sought to confirm Mr L understood its recommendation. AXG re-caped Mr L's stated priorities and the reasons for its advice, while noting he was giving up guaranteed benefit. Mr L explained during that call that he'd taken his mortgage in his mid-40's and it was due to run into his 70's. He didn't envisage working to that age, particularly in his existing role. And him thinking about reducing his mortgage was what had led him seek advice. So based on what AXG had suggested he might achieve by investing, including releasing more TFC, he believed it might be favourable. Mr L said he had read the advice, and had done so with Firm S.

The transfer was subsequently completed in line with this recommendation. Part three of Mr L's pension was also transferred, because it had to be as the advice included moving part two.

In June 2022, AXG contacted Mr L and said, as the advisors who had provided Mr L DB transfer advice, it was making him aware of a review of that advice which had been agreed with the regulator, the Financial Conduct Authority ('FCA'). And it invited him to take part. Mr L asked for his advice to be reviewed. Dissatisfied with the amount of time the review was taking Mr L asked our service to consider his complaint.

Mr L said, with hindsight he didn't think it was suitable for AXG to have advised him to transfer during the covid pandemic. He said his main objective at the time had been to reduce his mortgage and its remaining term. But his plans weren't finalised, and he'd always intended to continue working in some capacity. Now he was about to reach age 55, he didn't foresee his employment circumstances changing. He said Firm S had offered to review his options and referred him to AXG to transfer his pension. Mr L said the other things recorded as being a priority were not important to him and were emphasised by the adviser. And he said the risks and negatives of a transfer weren't sufficiently highlighted to him.

One of our Investigator's considered the complaint and felt that it should be upheld. She thought Mr L was likely to receive retirement benefits of a lower overall value by transferring. And she didn't think accessing his DB scheme to reduce his mortgage was necessary or in his best interests, as he had other means to reduce the balance and was not having any issues making repayments. Nor did she think the alternative death benefits offered by a SIPP justified giving up his guaranteed benefits. So, she thought AXG should compensate Mr L for any losses the transfer had led to.

AXG disagreed. It said Mr L had been clear he was keen to clear his mortgage and to leave his pension to his children. AXG said the advice was in line with Mr L's recorded priorities and attitude to risk. So, AXG said it stood by its advice to transfer. It also said it had not advised Mr L about the transfer of part three of his pension.

The investigator wasn't persuaded to change their opinion, so the complaint was referred to me to make a final decision.

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.

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Businesses ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

It's apparent from the available information that Mr L had been discussing his finances with Firm S. And the fact that it suggested a pension provider and investment strategy for his pension in the event of transfer indicates it might've suggested to Mr L that a transfer of his DB scheme benefits was a potentially appropriate way to meet his objectives. But I think it is important to be clear I'm only looking at the actions of AXG here.

The applicable rules, regulations and requirements

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of AXG's actions here.

PRIN 6: *A firm must pay due regard to the interests of its customers and treat them fairly.*

PRIN 7: *A firm must 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.*

COBS 2.1.1R: *A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).*

The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability. And the provisions in COBS 19 which specifically relate to a DB pension transfer.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for largely the same reasons given by the investigator.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, AXG should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr L's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

Financial viability

AXG was required to carry out an appropriate transfer value analysis ('APTA') by the regulator. This included producing a transfer value comparator ('TVC') – a comparison of the CETV with the estimated monetary cost of acquiring the same benefits as those the DB scheme guaranteed to provide at retirement. AXG also calculated how much Mr L's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield). The recommendation letter that AXG sent to Mr L referred to the contents of the APTA.

For retiring at age 65, AXG estimated that the cost of replicating the DB scheme benefits was likely to be £1,491,422.76, which was £776,920.76 more than the CETV of Mr L's DB scheme benefits. The critical yield was estimated to be 8.37% per year to match the full pension that the DB scheme would provide at 65 (starting at £36,280 per year). And to match the maximum TFC and reduced annual pension the DB scheme would provide at that point (£170,316 TFC and a starting pension of £25,547) the critical yield was 6.73%.

The critical yields to match the benefits the Pension Protection Fund ('PPF') would provide were also calculated. The PPF is a 'lifeboat' scheme to protect members of DB pension schemes when the employer became insolvent and couldn't meet any deficit in the funding of the DB scheme. It pays compensation to members of eligible schemes for their lifetime. The critical yield to match the full pension it was estimated the PPF would provide at age 65 (£32,792.24 per year), in the event Mr L's scheme became insolvent and pension benefits were provided by the PPF, was 6.22%. And to match the maximum TFC and reduced pension the PPF would offer (£177,763.83 TFC and a starting pension of £26,664.57), 5.85%.

AXG noted though that Mr L was interested in taking his retirement benefits early, from age 55. It said, under the DB scheme rules, it understood Mr L could not access his benefits until age 57. But to provide Mr L with examples, it calculated the relevant critical yields for taking benefits at age 57.

To match the full pension his DB scheme was estimated to provide at age 57 (which would start at £18,049) the critical yield was 10.81%. And to match the TFC and reduced starting pension the scheme would offer from 57 (£90,446 and a starting pension of £13,566 per year) the critical yield was 7.55%.

In respect of the PPF, to match the benefits it was estimated might be provided at age 57 the critical yields were 15.79% for the full pension it'd offer (£23,985.60) and 14.78% for the TFC and reduced pension (£137,119.18 and £20,567.87 per year).

The advice was given after the regulator gave instructions in Final Guidance FG17/9 as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published by the Financial Ombudsman Service on our website. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor.

The relevant discount rates closest to when the advice was given which I can refer to was published by the Financial Ombudsman Service for the period before 1 October 2017 and were 4% per year for 12 years to retirement and 3% for 4 years to retirement. I acknowledge that these were from several years prior to the advice being given so I've also considered the regulator's standard projection rates. The regulator's upper projection rate at the time of the advice was 8%, the middle projection rate 5%, and the lower projection rate 2%.

I've taken all of this into account, along with the composition of assets in the discount rate, Mr L's 'low medium' attitude to risk and also the term to retirement. There would be little point in Mr L giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme. But here I think Mr L was likely to receive benefits of a substantially lower overall value than the DB scheme at retirement, as a result of investing in line with that attitude to risk. And even more so in the event of early retirement. And this would be the case even if the scheme moved to the PPF.

For this reason alone, I don't think a transfer out of the DB scheme was in Mr L's best interests. Of course, financial viability isn't the only consideration when giving transfer advice, as AXG has argued in this case. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I've considered this below.

Flexibility and access to tax-free cash

AXG has said that Mr L wanted to be able to repay his mortgage at age 55 from his pension fund, change job and to take income flexibly from his pension, as and when he needed it, which would be supplemented by rental income and his expected reduced wage. And it noted that maximising tax-free cash and retiring early were selected as the most important priorities for him during the fact-find.

I've heard a recording of the call with Mr L, which took place after AXG had issued its recommendation to transfer, where this was discussed. And Mr L did indicate this was why he'd sought advice. I note though that the contents of the call and the lack of reference to repaying his mortgage in the recommendation makes it appear that this was the first time AXG was aware of this apparent objective. And this conversation took place after AXG had already recommended a transfer and after Mr L had been in contact with Firm S for some time. And again, it appears, based on it suggesting an investment strategy before DB transfer advice had been given, Firm S may have at least indicated that a transfer might be an appropriate way to meet this goal.

Mr L has confirmed that potentially repaying his mortgage at age 55 was what prompted him to seek advice, initially from Firm S. And this was why potentially transferring his DB scheme was considered. But he has also highlighted that he was not in any financial difficulty, he was in a secure and well-paid job and he was in good health and would've continued working, had he been advised that a transfer was unsuitable. So, his plans were not finalised.

I've thought about all of this carefully. Mr L was 52 at the time of the advice. So, I believe he was likely beginning to make plans for what his retirement would look like. And he did have a large mortgage, which had a significant period still to run. So, thinking about how to address that would've been important to his planning.

Mr L did though have a significant surplus income and I can't see that he'd had any issues making his mortgage repayments, or that he wouldn't have been able to maintain these moving forward, particularly while he was in his existing job. And he couldn't access any benefits from his pension until age 55 at the earliest anyway. So, at the point of the advice, any thoughts about early retirement were purely aspirational and, in my view, unlikely to be finalised. And a decision about transferring – which is a one-off, irreversible choice - could've been deferred until his plans were finalised, avoiding incurring any unnecessary investment risk in the meantime.

In addition, while this might've been something Mr L was interested in, AXG's role in providing advice about his pension and a potential transfer wasn't that of wish fulfilment or to put in place what Mr L might've thought he wanted. It was to consider what he needed and advise him on what was in his best interests.

It appears that Mr L would not have been able to access his benefits under the DB scheme until age 57. But again, while I'm satisfied he did talk about potentially retiring at age 55, I don't think a final decision had been made at that point. So, it appears he had the option of deferring his plans.

The benefits he'd have received under the DB scheme from age 57 – a full starting pension of £18,049 or £90,446 TFC and a reduced starting pension of £13,566 per year – wouldn't have been enough to clear the full mortgage value noted in the fact find. But Mr L had several years in which he'd have continued to make repayments to reduce that balance. And, given his surplus income, he could've also made overpayments. Indeed, he has indicated this balance has already reduced by approximately £26,000 since the advice. Mr L also had a significant amount in savings, which he says has also increased in the time since, that could've been used in addition to tax free cash from his pension, to further reduce the mortgage. And although he might've hoped to clear the mortgage in full, given he was intending to continue to work in some capacity and receive a wage, would continue to receive rental income and could've received a significant guaranteed income from his DB scheme, reducing the mortgage to a lower level and continuing to meet payments was also an option for Mr L.

Based on the CETV it appears that a transfer did present an opportunity to potentially have access to a larger sum of TFC, particularly at early retirement. But this involved taking investment risk, which Mr L wasn't otherwise subject to. And again, while I don't doubt that access to a large sum sounded appealing, I don't think he necessarily needed this to meet his objective of reducing his mortgage and it involved giving up a guaranteed escalating income in retirement.

Although I acknowledge that the fact-find suggested Mr L was interested in having flexibility, I can't see that he had a strong need for a variable income in retirement. Indeed, I can't see that there was any analysis of his expected income needed in retirement.

Taking all of this into account, I don't think transferring at the time of the advice based on Mr L's aspirational goals was in his best interests, particularly as he was unlikely to improve on the guaranteed pension benefits he was entitled to under the scheme by doing so.

Death benefits

AXG has said that the alternative death benefits offered by transferring, and the flexibility to leave his pension to his children appealed to Mr L. Mr L however says this wasn't a significant consideration for him until speaking to Firm S and AXG.

Death benefits are an emotive subject and of course when asked, most people would like their loved ones to be taken care of when they die. The lump sum death benefits on offer through a personal pension were likely an attractive feature to Mr L. But whilst I appreciate death benefits are important to consumers, and Mr L might have even thought it was a good idea to transfer his DB scheme to a personal pension because of this once they were discussed, the priority here was to advise Mr L about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think AXG explored to what extent Mr L was prepared to accept a lower retirement income in exchange for higher death benefits.

I also note that, in the call recording I've heard, Mr L indicated that he had a partner and they had been together for some time. It is unclear whether his partner would've qualified for the spouse's pension provided by the DB scheme at the time. But if they had later married, it seems likely she would've done. But I can't see that AXG considered this at all.

The CETV figure would no doubt have appeared attractive as a potential lump sum. But the sum remaining on death following a transfer was always likely to be different to that figure – unless Mr L had passed away immediately, which was unlikely. As well as being dependent on investment performance, it would've also been reduced by any income Mr L drew in his lifetime. Mr L was in good health, so there was nothing to suggest he was less likely to live until at least his average life expectancy. And given the advice seems to have been based on him taking the maximum possible TFC from the pension and then continuing to draw a regular income, it appears likely the fund would've been significantly depleted by the time he reached his average life expectancy. So, the pension may not have provided the legacy that Mr L may have thought it would. In any event, AXG should not have encouraged Mr L to prioritise the potential for alternative death benefits through a personal pension over his security in retirement.

Furthermore, if Mr L genuinely wanted to leave a legacy for his children, I think AXG should've instead explored life insurance. Mr L had a significant income surplus through with which to pay premiums. And he was in good health, so this appears to have potentially been a realistic option. I appreciate that life insurance can be expensive, particularly so if trying to provide cover equivalent to Mr L's CETV. But basing insurance on this figure would essentially assume that he would pass away on day one following the transfer, and that isn't realistic. So, the starting point ought to have been for AXG to ask Mr L how much he would ideally like to leave to his family, and this could've been explored on a whole of life or term assurance basis – which was likely to be cheaper. But there's little evidence it did so.

Overall, I don't think different death benefits available through a transfer justified the likely decrease of retirement benefits for Mr L. And I don't think that insurance was properly explored as an alternative.

Control

I think Mr L's desire for control over his pension and how it was invested was overstated. I can't see that Mr L had experience or specialist knowledge relating to the management of a fund of this size and importance. And he has said this wasn't actually something he was necessarily looking for. The recommendation also indicated the intention was that, after a transfer, Firm S would provide him with ongoing support and advice. So, I don't think that this was a genuine objective for Mr L – it was simply a consequence of transferring away from his DB scheme.

Concerns over financial stability of the DB scheme

The fact-find noted that Mr L's DB scheme was underfunded and that he was potentially concerned about this. And the recommendation letter indicates AXG agreed this was concerning. However, Mr L says he had no concerns about the funding of the scheme until speaking to Firm S and AXG and this was not a genuine worry.

I've been provided information that indicates that the DB scheme was underfunded. But this was from 2018. Whereas the advice was given in 2021. And the information on file suggests there was a plan in place to address the shortfall. So, I don't think there is enough information to say the scheme was in such a position that Mr L ought to have genuine concerns about this.

In addition, the scheme was covered by the PPF. And, as I've explained above, this would've still provided Mr L with guaranteed benefits. I also think AXG should have explained that a potential move to the PPF was not as concerning as Mr L might've first thought – if this was a genuine concern of his. As I've outlined already, Mr L was still unlikely to match, let alone exceed the benefits available to him through the PPF if he transferred out to a personal pension. So, I don't think transferring for this reason, was in Mr L's best interests.

Suitability of investments

AXG recommended that Mr L take out a pension with a specific provider and invest in line with a suggestion already made by Firm S. Ultimately though, AXG was responsible for the advice to transfer, without which this couldn't have happened. But as I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr L, it follows that I don't need to consider the suitability of the investment recommendation. This is because Mr L should have been advised to remain in the DB scheme and so the investments wouldn't have arisen if suitable advice had been given.

Summary

I don't doubt that the flexibility and potential for higher death benefits on offer through a personal pension would have sounded like attractive features to Mr L. But again, AXG wasn't there to just transact what Mr L might have thought he wanted. The adviser's role was to really understand what Mr L needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr L was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr L was very likely to obtain lower retirement benefits and, in my view, there were no other particular reasons which would justify a transfer and outweigh this.

So, I think AXG should've advised Mr L to remain in his DB scheme.

Of course, I have to consider whether Mr L would've gone ahead anyway, against AXG's advice. I've considered this carefully.

As I've explained, I am satisfied that Mr L was thinking about how he could address his mortgage as he moved into retirement. I also accept that Mr L is an adult and plainly capable of making his own decisions. And I also believe, when entering discussions with AXG, Mr L might've thought that transferring was a good idea. I also acknowledge that, when speaking to AXG after receiving the recommendation, Mr L indicated he understood the report and that he felt it was detailed and thorough. But I can't rule out the possibility that the discussions he'd already had with Firm S influenced Mr L's point of view – as again it seems to have suggested a transfer as a potential solution. And ultimately, while he might've felt well informed by the report he received, AXG recommended that Mr L transfer, and I think he relied on that advice.

I'm not persuaded that Mr L would've insisted on transferring out of the DB scheme, against AXG's advice. I say this because Mr L had a low medium attitude to risk and this pension accounted for the majority of his retirement provision. So, if AXG had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think he would've accepted that advice.

I'm not persuaded that his ambitions in relation to his mortgage or thoughts on flexibility and alternative death benefits were so great that he would've insisted on the transfer knowing that a professional adviser, whose expertise he had been recommended and was paying for, didn't think it was suitable for him or in his best interests. If AXG had explained that Mr L could meet his objectives without risking his guaranteed pension, I think that would've carried significant weight. So, I don't think Mr L would have insisted on transferring out of the DB scheme.

AXG's role was pivotal, since the eventual investments were fully reliant on the funds being transferred first. If that hadn't happened, Mr L would've remained in his DB scheme and the investments wouldn't have happened. So, in my view, the entirety of the impact of the transfer stems from AXG's unsuitable advice to transfer away from the DB scheme.

Mr L also transferred the DC portion of his occupational pension, when transferring the DB portions of his pension following AXG's advice. As part of the complaint Mr L has said he was advised to transfer the DC portion of his pension (part three). But the suitability report issued by AXG said it wouldn't be considering that part of Mr L's pension. And it doesn't appear to have provide advice in relation to part three of his pension.

However, as I've already noted, the trustees of the occupation pension scheme have said that the DC portion of Mr L's pension benefits (part three) was effectively tied to part two – the DB benefits that were held under the same section of the pension. And all benefits held under that 'section' had to be transferred together if moving one part. AXG advised Mr L to transfer part two of his pension. So, following that advice necessitated transferring part three, regardless of the fact that AXG didn't address this as part of its recommendation. So, that part of Mr L's pension was only transferred because of AXG's advice. And as a result, I think any losses relating to that part of Mr L's occupational pension also stem from AXG's advice.

In light of the above, I think AXG should compensate Mr L for any losses incurred as a result of the unsuitable advice.

Putting things right

My aim in awarding redress is to put Mr L as far as possible in the position he would be in now if AXG had given him suitable advice. I think Mr L would have remained in the occupational pension scheme and would've retained both his DB and DC benefits.

What should AXG do?

To compensate Mr L fairly, AXG must determine the ***combined fair value*** of his transferred pension benefits as outlined in Step One and Step Two below. If the ***actual value*** is greater than the ***combined fair value***, no compensation is payable.

actual value

This means the actual amount payable from the SIPP at the date of the calculation.

fair value – step one

If Mr L had been given suitable advice, I think he would have remained in the DB scheme. AXG must therefore calculate the value of the benefits Mr L lost as a result of transferring out of his DB scheme in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in policy statement PS22/13 and set out in the regulator's handbook in DISP App 4:
https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter.

For clarity, Mr L has said he has not yet retired, and has no plans to do so at present. So, the calculation should be based on the scheme normal retirement age, as per the usual assumptions in the FCA's guidance.

This calculation should be carried out using the most recent financial assumptions in line with DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr L's acceptance of the decision.

fair value – step two

AXG must use the benchmark shown below to determine the fair value of the DC portion of Mr L’s occupational pension scheme if suitable advice had been given.

Investment name	Status	Benchmark	From (“start date”)	To (“end date”)	Additional interest
Value of new SIPP which relates to the DC section of the occupational pension	Still exists	Notional value from the administrator of the occupational pension	Date of investment	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 90 days of the business receiving the complainant's acceptance)

Any additional sums paid into the SIPP should be added to the fair value calculation from the point in time when they were actually paid in. Any withdrawal, income or other payment out of the SIPP should be deducted from the fair value 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 will accept if AXG totals all those payments and deducts that figure at the end instead of deducting periodically.

In the event that it isn’t possible to obtain a notional value from the trustees of the occupational pension scheme, AXG will need to determine a fair value for Mr L's investment instead, using this benchmark: For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds. 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.

To arrive at the fair value when using the fixed rate bonds as the benchmark, if AXG needs to do so here, 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. Those rates should be applied to the investment on an annually compounded basis.

Why is this benchmark suitable?

In the event AXG needs to use the benchmark, I think this is appropriate because:

- Mr L had a ‘low medium’ attitude to risk
- 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.
- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It’s a fair measure for someone who was prepared to take some risk to get a higher return.
- I consider that Mr L's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr L into that position. It does not mean that Mr L would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr L could have obtained from investments suited to his objective and risk attitude.

The combined value of the sums produced by the above two steps is the ***combined fair value***.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, AXG should:

- always calculate and offer Mr L redress as a cash lump sum payment,
- explain to Mr L before starting the redress calculation that:
  - his redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
  - a straightforward way to invest his redress prudently is to use it to augment his personal pension
- offer to calculate how much of any redress Mr L receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr L accepts AXG's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr L for the calculation, even if he ultimately decides not to have any of his redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr L's end of year tax position.

Redress paid to Mr L as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, AXG may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr L's likely income tax rate in retirement – presumed to be 20%**.** So, making a notional deduction of 15% overall from the loss adequately reflects this.

The payment resulting from all the steps above is the 'compensation amount'.

Where I uphold a complaint, I can award fair compensation of up to £375,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £375,000, I may recommend that the business pays the balance.

My final decision

<u>Determination and money award</u>: I uphold this complaint and require AXG Advice Ltd to pay Mr L the compensation amount as set out in the steps above, up to a maximum of £375,000.

<u>Recommendation:</u> If the compensation amount exceeds £375,000, I also recommend that AXG Advice Ltd pays Mr L the balance.

If Mr L accepts this decision, the money award becomes binding on AXG Advice Ltd.

My recommendation would not be binding. Further, it's unlikely that Mr L can accept my decision and go to court to ask for the balance. Mr L may want to consider getting independent legal advice before deciding whether to accept any final decision.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr L to accept or reject my decision before 1 November 2023.

Ben Stoker
Ombudsman