DRN-4355353

The complaint

Miss B complains that AXG Advice Ltd ('AXG')(company number 05677304) which at the time the advice was given was called AXG Money Ltd, gave her inappropriate advice to transfer her pension.

What happened

Miss B is represented but for ease of reference I have simply referred to Miss B and for these purposes that includes comments made on her behalf by her representative.

Miss B said she was cold called by AXG and advised to move her personal pension into a Self-Invested Personal pension (SIPP). She didn't think this was suitable for her and she had lost out. She said AXG failed to take into account her personal situation at the time of transfer, it didn't do an adequate or any assessment of her financial situation or other assets and liabilities, her capacity for loss etc. AXG recommended non-standard investments which were not suitable for her needs. Her income was around £25,000, she was single and was over 50. She had no previous investment experience or knowledge of financial markets or pension and a low capacity for loss and attitude to risk. The transfer took place in December 2018 and was worth around £66,000. She was promised greater growth in excess of that from her current provider. She had since transferred out of the SIPP and in 2022 transferred around £63,000 to another provider. There had been breaches of numerous conduct of business rules.

AXG said its business files were corrupted so it could not provide them and did not make any comment in response to the complaint made by Miss B other than to say that it had not charged any ongoing fees via AXG.

My provisional decision

I issued a provisional decision in this complaint and said the following.

In order to make an award against AXG I needed to decide that is had done something wrong. I had limited information to enable me to do this as AXG had not submitted its business file and had not made any comments on the complaint made by Miss B nor on the view issued by the investigator.

I had however seen a copy of the SIPP application form completed and signed by Miss B in 2018 and had details of her personal circumstances at the time. I did not have details about the personal pension she was invested in prior to her transfer in 2018. I had asked for information about the previous scheme, its charges and investments but had not been provided with any information about it.

Miss B's 2018 transfer was a pension switch from one money purchase policy or scheme to another. In this case from a personal pension to a SIPP. The Financial Services Authority (now the FCA and who governs the advice given by AXG), published a report and checklist for pension switching in 2009. I had regard to that in considering the evidence.

In short the FCA said the reasons for transfer needed to be sound. The potential to be better off had to be enough to more than compensate for the risk that the consumer might end up worse off. A consumer with a low attitude to risk would need greater potential to gain (without taking more investment risk) than a consumer with a high attitude to risk.

It identified four main areas where consumers could miss out including:-

- Switching to a more expensive pension in terms of exit costs, ongoing costs or initial costs, without good reason,
- Lost benefits without good reason e.g. a guaranteed annuity rate or entitlement to higher tax-free cash,
- The new pension did not match their attitude to risk
- The new pension had a need for ongoing investment reviews but this was not explained, offered or put in place.

The SIPP application form showed that the initial charge for the transfer advice was 2% of the transfer amount and I could see that around £1,320 was paid. Further there was an ongoing annual charge of 0.5% of the fund value as an ongoing adviser fee. There was an Annual Management Fee of £300 plus VAT and I could see that this was paid out several times.

There was also an establishment fee of £175 plus VAT and I could see this was paid at the start.

So the initial cost of transferring were the advice and set up fee which together total around £1,500 which is a significant sum when compared to the £66,000 transferred. This is around 2.3%. As the FCA said the potential to be better off had to be enough to more than compensate for the risk that the consumer might end up worse off. So I needed to have evidence to show that this level of cost was merited and there was a reasonable prospect of the cost being recovered over a relatively short period of time. Further that the assumed recovery period was not due to the adoption of higher risk investments with higher assumed returns that did not meet Miss B’s attitude to risk.

The investment management charges were said to be 0.39% of the fund and it was said to be invested in a Balanced ETF Portfolio. I had assumed that this charge was in addition to the 0.5% ongoing adviser fee. So it seemed that annually Miss B would be paying out 0.39% plus 0.5% plus £300 plus VAT.

Where there is an ongoing adviser fee I would expect to be provided with details of the service that will be provided for those fees, such as an annual review etc. Miss B said she did not remember receiving any annual reviews. I cannot however see in the list of transactions on her scheme that any such fees were paid out to her adviser after the transfer in 2018. So I assumed she did not receive any such services nor pay for them.

I did not have details of the investments Miss B was holding in her previous scheme and did not have details of what is within the ‘Balanced ETF Portfolio’ in the new scheme. I was not therefore able to make any comparison about the risk profile of the old scheme compared to the new and therefore its suitability. Nor was I able to conclude that the new investment is non-standard as suggested in the complaint.

Similarly in relation to charges, I had details of the new scheme charges but not the old so I was again unable to conclude whether it was beneficial to transfer.

I had no information as to whether there were any lost benefits in the previous scheme such as higher tax-free cash or any guaranteed rates or bonuses or exit fees etc.

The fact this was a transfer to a SIPP did not in my view mean that the transfer advice was unsuitable, as much depended on the nature of the investments selected and the charging structure.

The FCA suggested that due to the cost of advice on a transfer there should be a reasonable basis for the advice for example because the new scheme charges are lower and the advice cost would be recovered over a reasonable period through lower charges. Again as I had no information on the old scheme I was unable to reach a conclusion about this.

Based on the evidence presented I did not have enough evidence to conclude that the advice to transfer was unsuitable and it would not be fair and reasonable to conclude that it was just because AXG did not reply.

Before I issued my final decision, I invited Miss B to provide me with evidence about her previous scheme such as its nature, terms, charges, investments etc and details of the investment in the new scheme (such as a key information document), and details of whether or not she received any ongoing services, then I could review my provisional conclusions.

For those reasons I did not propose to uphold the complaint.

AXG did not respond.

The investigator spoke to Miss B to ask her for further information. Following that conversation the investigator made contact with the pension administrator to ask for detail of charges and investments in the new scheme. However that new business was in difficulty so there was limited information available.

The investigator also contacted the old scheme to ask for details of the type of policy and any guarantees etc.

The old provider confirmed that Miss B held a Group Individual Personal Pension 1995 with two parts. One containing ordinary rights and the other former protected rights. The policy was:-

- invested 100% in a unitised with profits policy.
- The last monthly charge was £4.74 and taken on 1 December 2018 by unit deductions.
- There was an annual management charge for the unit linked funds of 0.875% for the unit linked funds.
- There was no AMC for with profits funds but charges were allowed for when declaring bonus rates. There was a 5% bid/offer spread on the unit price. The charges overall would have been covered by the maximum 1% stakeholder charges limit.
- There were no safeguarded benefits on the policy nor any enhanced tax-free cash. There were no exit penalties at the time of transfer.
- As the policy was invested in a with profits fund and Market Value Reduction (MVR)

may be applied but there was currently no MVR.

The new provider sent what it said were the available documents. These were a copy of an invoice for fees from June 2020 for around £642. This is listed as fees for a pension report service and professional services and a 1% product advisory fee payable to AXG. A gross scheme value statement which showed a nil balance on the investment platform on 21 February 2022 and on the trustee bank account on 6 September 2023. It is difficult to draw anything useful from this information. I had not seen any information to show Miss B's money was actually invested in the balanced ETF portfolio that was proposed. It is therefore possible it remained in the cash account and the difference in value between the amount transferred into the scheme and the amount transferred out was because it remained in cash and was reduced by fees.

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.

Based on the information provided about the old pension scheme it does not seem that Miss B suffered the loss of any special rights (such as higher tax-free cash) on transferring. It seems Miss B was invested in a unitised with profits fund and that the charges would not exceed 1%.

In my provisional decision I noted that '*The investment management charges were said to be 0.39% of the fund and it was said to be invested in a Balanced ETF Portfolio. I had assumed that this charge was in addition to the 0.5% ongoing adviser fee. So it seemed that annually Miss B would be paying out 0.39% plus 0.5% plus £300 plus VAT'.*

It did not however seem that the ongoing adviser fee had been paid and the remaining charges were 0.39% plus 300 plus VAT. Based on the value transferred out of the scheme of around £63,000 the £300 plus VAT would be around 0.5 to 0.6% of the fund value. In total this is still less than the 1% maximum that would have been paid in the old scheme.

However had the adviser charges been paid as anticipated then the new scheme would have been more expensive than the old scheme and therefore would have fallen into one of the areas identified by the FCA being '*Switching to a more expensive pension in terms of exit costs, ongoing costs or initial costs, without good reason*,'.

Without information about the nature of the new investments it was not possible to conclude that the new scheme investment was likely to deliver investment returns that might be better than those in the old scheme. Further given that Miss B subsequently transferred out of the new scheme, less than she invested it would seem that the investments didn't deliver positive performance even after charges were deducted.

I note Miss B's income was around £25,000, she was single, over 50 and had no previous investment experience or knowledge of financial markets or pension and a low capacity for loss and attitude to risk. I do not think the new scheme was suitable for her. I say that because the proposed charges were greater than in the old scheme. Even if the adviser charges were not applied, at the time the advice was given it was contemplated that they would be payable. So it should not have been possible to conclude that it was suitable as the new scheme was more expensive than the old one.

While I do not have any information on the new investments they clearly did not deliver a positive return in the new scheme and therefore did not enable Miss B to recover the cost of the advice associated with the transfer. Further her personal circumstances show that she had very limited ability to sustain that financial impact.

For all those reasons I think the advice was not suitable. I have notified AXG of this change in my view and my proposed compensation (set out below). It made no further comment other than to repeat that it had not charged any ongoing fees. While I note this as I said above the fees were in the original proposal and their inclusion contributed to my conclusion that the advice was not suitable at the time it was given.

I uphold this complaint and direct that AXG should pay Miss B compensation as follows:-

Fair compensation

In assessing what would be fair compensation, my aim is to put Miss B as close as possible to the position she would probably now be in if she had been given suitable advice.

I think Miss B would have remained with her previous provider; however I cannot be certain that a value will be obtainable for what the previous policy would have been worth. I am satisfied what I have set out below is fair and reasonable, taking this into account and given Miss B's circumstances and objectives when she invested.

What should AXG do?

To compensate Miss B fairly AXG should:

- Compare the **Actual Value** of Miss B's investment by taking the value at the date she transferred away from her new provider (this seems to be around £63,000 in February 2022) with the **Notional Value** if it had remained with the previous provider until the date she transferred away from her new provider. If the **Actual Value** is greater than the **Notional Value**, no compensation is payable. If the **Notional Value** is greater than the **Actual Value**, there is a loss and compensation is payable.

- AXG should also add any interest to the amount of any loss calculated as a above, at the rate of 8% per annum simple from the date she transferred away from her new provider (the ‘end date’) to the date of payment to Miss B pursuant to this Final Decision.

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

- If AXG are unable to pay the compensation into Miss B's pension plan, it should pay that amount direct to her. 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 Miss B won’t be able to reclaim any of the reduction after compensation is paid.

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

In addition, AXG should:-

- pay Miss B £200 for the distress and inconvenience caused.

- Repay the adviser's fees together with simple interest at 8% a year, from the date the fees were paid to the date of settlement under this final decision. If the above comparison shows that no compensation is payable, the difference between the **Actual Value** and the **Notional Value** can be offset against the fees with interest. This service has seen a printout of a full set of transactions on her account which includes adviser fees payable to AXG.

- Provide the details of the calculations to Miss B in a clear, simple format.

- If AXG consider that its required by HM Revenue & Customs to deduct income tax from any interest, it should tell Miss B how much its taken off. AXG should also give Miss B a tax deduction certificate in respect of interest if Miss B asks for one, so she can reclaim the tax on interest from HM Revenue & Customs if appropriate

Actual value

This means the actual amount paid from the investment at the date Miss B transferred her investment away from the new provider (believed to be in February 2022) (the 'end date').

Notional Value

This is the value of Miss B's investment had it remained with the previous provider until the end date. AXG should request that the previous provider calculate this value.

Any additional sum paid into the new provider's SIPP should be added to the notional value calculation from the point in time when it was actually paid in. This service has not seen evidence that there were any such additions so this is mentioned for completeness only.

If the previous provider is unable to calculate a notional value, AXG will need to determine a fair value for Miss B'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. This benchmark should be applied to the amount transferred to the new provider and from the period from the date of that transfer to the end date.*

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.

Why is this remedy suitable?

I've chosen this method of compensation because:

- Miss B wanted Capital growth with a small risk to her capital.

- If the previous provider is unable to calculate a notional value, then I consider the measure below is appropriate.

- 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 her 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 Miss B's risk profile was in between, in the sense that she was prepared to take a small level of risk to attain her investment objectives. So, the 50/50 combination would reasonably put Miss B into that position. It does not mean that Miss B would have invested 50% of her 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 Miss B could have obtained from investments suited to her objective and risk attitude.

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

My final decision

I uphold this complaint.

I direct that within 30 days of this service notifying AXG Advice Ltd that Miss has accepted my decision it must:-

1. calculate and pay to Miss B the fair compensation calculated as I have set out above and

2. pay £200 for distress and inconvenience

3. Repay the adviser's fees together with simple interest at 8% per annum simple, from the date the fees were paid to the date of settlement under this final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 8 November 2023.

Colette Bewley
Ombudsman