complaint

Mr and Mrs G's complaint is about the advice they were given by Intrinsic Financial Planning Ltd (IFP) to invest into two investment bonds and two ISA's. They feel that the advice they were given was unsuitable and feel that their investments have performed poorly. They are unhappy with the charges, both on the investments themselves and with respect to the amount of commission and remuneration received by the adviser. They say they were unaware of the potential tax liabilities when taking significant withdrawals from the bonds. They also believe that the adviser did not make her 'tied' status clear and led them to believe she was an independent financial adviser.

background

I issued my provisional decision on 7 April 2015, in which I explained why I thought the complaint should partially succeed. A copy of that decision is attached and forms part of this final decision.

IFP did not agree with my findings and made the following comments in respect of my recommendation:

- A – It accepts the evidence submitted. However, it does not believe it should be liable for the interest and penalties applied by HMRC, as Mr and Mrs G were made fully aware of the chargeable events that had been incurred at the time.
- B – It is prepared to refund half the commission as per its original offer. This would equate to a payment of £13,717.00.
- C – It has questioned the end date of the calculation as the 'servicing rights' were moved to Mr and Mr G's new adviser in January 2014. In view of this, it believes it should not be responsible for any losses after this date.
- The provisional decision states '*I consider that my aim should be to put Mr and Mrs G as close to the position they would probably now be in if they had not been given unsuitable advice. Mr and Mrs G should not have invested in the switched funds. It is not possible to say precisely what would have happened otherwise.'* IFP believes *it is* possible to say precisely what would have happened otherwise. In its view, the monies would have remained in the original funds which I have agreed were suitable.

Mr and Mrs G's representative also did not agree with all my findings and made the following comments in respect of my recommendation:

- It maintains that the bonds were unsuitable from outset. Furthermore, it believes that a full refund of fees/commissions should be considered as this has depressed the value of the bond from the outset.
- It maintains that Mr and Mrs G were deceived as to the nature of the advice they were given. The adviser's emails talk freely about investment decisions and yet from the outset an expensive multi-manager fund was used. The fund used initially carried a charge of 1.24%. Had a portfolio been constructed along the lines of the recommended redress methodology, the overall charges would be around 0.82% and not over 2%.

- It believes the provisional decision does not adequately address the issues of the ISAs and GIA. Mr and Mrs G were not properly advised of the restricted options and tied-agent status of the adviser.

- It believes a refund of commissions is due as these were not properly disclosed.

After receiving these submissions, IFP's point about the penalties incurred because of late payment of tax was put to Mr and Mrs G's representative. It confirmed that they had been incurred because Mr and Mrs G had not been advised about the tax liability and therefore had not included them on their tax returns in the relevant year. Although initially IFP accepted that, it has since said that statements Mr and Mrs G had received from the provider of the investments would have made it clear there was a tax liability.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I have considered the further submissions that have been made since issue of my provisional decision.

submissions from Mr and Mrs G's representative

I discussed in the provisional decision that I was not persuaded that (but for remedying certain tax liabilities) the advice, particularly with regard to funds used and fund risk, was unsuitable. I do not therefore believe that refunding all the commission is proportionate in the circumstances and fair and reasonable to both parties. I remain of the view that refunding some of the commission, making good the tax liabilities caused and remedying some of the switches, is a fair and reasonable outcome.

As I also discussed, using a 'fund of funds' approach is not necessarily unsuitable and whilst there are usually somewhat higher charges for that approach there are some benefits to that, as I discussed. Charges in any event are not the only factor when making a decision about an investment. So I do not believe that simply because Mr and Mrs G's representative would have done things differently and perhaps at a lower cost means that the advice was necessarily unsuitable on that basis. Another adviser might find a lower cost way to do what Mr and Mrs G's new adviser has suggested; that does not make that advice necessarily unsuitable either.

I would note however that Mr and Mrs G's representative is correct in that, in the period in which I am awarding redress, they will effectively be treated as not having paid 'higher charges' because the comparative indices do not apply such charges.

It is by no means clear that the adviser did not explain her tied status. And even then not making clear the status does not give an automatic right to compensation or some form of award; it would have to be considered what that lack of clarity would have caused. But in any event, I remain of the view expressed in my provisional decision. It is by no means the case that the advice would have been necessarily 'better' if received from an IFA or that what could have been otherwise recommended would have been better. I have outlined in the provisional decision what issues should be addressed and compensated for and I think that the fair outcome in the circumstances.

I have noted the point that Mr and Mrs G thought that the adviser was ‘managing’ their funds; which I interpret to mean the day to day allocation of money to specific investments. I agree that was not happening here. But is it very difficult to assess what interpretation was being placed on ‘management’; whether that was held out to be choosing specific underlying investments or merely choosing the right funds (such as the ‘multi-managed’ funds) and then keeping that under review. Either could command an ongoing fee; fees are not only payable for managing assets as a fund manager would.

So I cannot come to any considered findings on this issue; it is not more likely that Mr and Mrs G were misled or that some fees were not payable (allowing for the commission refund I believe appropriate).

submissions from IFP

I have considered IFP’s point about the change in ‘servicing rights’; essentially when Mr and Mrs G ‘left’ IFP and started to take advice from another party. A simple change in the adviser or business ‘attached’ to Mr and Mrs G does not mean that the consequences of any previously unsuitable advice ends there. There would have to be some point when that new party took some action or could have taken some action (say a formal review of their circumstances) so as to end the continuing liability of IFP.

In this case I understand that the servicing rights were transferred variously between February and March 2014. There was then a few months when the new adviser reviewed the situation and formulated recommendations, with encashment taking place for most investments around June 2014. One investment was encashed in September because of some trust issues. I think the timescales reasonable and so it would be fair and reasonable to calculate loss as at the date of encashment, with interest added to any loss calculated on those dates until the date redress is paid.

Both parties have already been informed of this approach.

IFP has also queried the use of the indices. It says that the money would have remained in the original funds had the switches not been recommended.

That is certainly possible but my view was that as a decision (which had been accepted) was made to switch, then it was by no means certain that the money would have remained in the original funds. My view was that the funds chosen for the switch were not likely suitable but that does not mean that switches would not have been made. Given that and that it was unclear what other funds would have been chosen for the switch, then the use of the indices was a fair and reasonable approach in the circumstances. I remain of that view.

In terms of the penalties incurred for late payment of tax, I have considered both parties submissions on this issue. I can appreciate both points of view. On balance I believe IFP *should* pay these penalties. It may well be that Mr and Mrs G received statements when they made withdrawals which could have indicated that a chargeable event had occurred (although most I have seen refer to no chargeable event having occurred). But, as discussed in my provisional decision, I do not believe that Mr and Mrs G received clear information about the tax treatment or whether any tax would be payable on withdrawal. Given that, it is understandable if they proceeded (without any particular advice to the contrary) on the basis that tax was not payable.

It should also be noted that the provider saying a chargeable event has occurred does not necessarily mean that tax *is* payable – as that will depend on the status of the investor – and the provider does not have that information. For that reason the provider will not be saying that there *is* a liability to pay.

So, overall, I think the penalties were likely incurred not as a result of Mr and Mrs G's wilful failure to pay the tax liability but as a result of the advice they received from IFP.

fair compensation

As detailed in my provisional decision, my view is that the 2012 fund switches with respect to the £500,000 and £80,000 investments, were unsuitable. I also believe the choice of bond 'wrapper' for the investments was unsuitable. I do not believe the ISA investments unsuitable. Given this, I make the following award of (A + B + C), where,

A) With respect to the tax liabilities that the choice of bond created (£500,000 and £80,000 investments) these should be paid by IFP. That includes the penalties and interest imposed for late payment by HMRC. I believe Mr and Mrs G have now provided evidence that the tax liabilities have been incurred to IFP's satisfaction.

B) A refund of half of the commission created initially by the investment into the £500,000 and £80,000 bonds, as already offered by IFP.

C) With respect to the switches in 2012, a comparison should be undertaken with indices to calculate if a loss has been caused.

In respect of (C), in assessing what would be fair compensation, I consider that my aim should be to put Mr and Mrs G as close to the position they would probably now be in if they had not been given unsuitable advice.

Mr and Mrs G should not have been invested in the switched funds. It is not possible to say *precisely* what they would have happened otherwise, but I am satisfied that what I have set out below is fair and reasonable given Mr and Mrs G's circumstances and objectives when they invested.

what should IFP do?

To compensate Mr and Mrs G fairly, IFP must:

- Compare the performance of Mr and Mrs G's investments with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investments. If the *actual value* is greater than the *fair value*, no compensation is payable.

Intrinsic Financial Planning Ltd should also pay interest as set out below.

- Pay to Mr and Mrs G £500 for the inconvenience caused by the advice they were given. Income tax may be payable on any interest awarded.

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest

£500,000 and £80,000 bond investments	transferred	for half the investment: FTSE WMA Stock Market Income Total Return Index; for the other half: average rate from fixed rate bonds	date of switches to Equity and Bond funds	date encashed/surrendered	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.

fair value

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

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, IFP should use the monthly average rate for the fixed rate bonds with 12 to 17 months maturity 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 remedy suitable?

I have decided on this method of compensation because:

- Mr and Mrs G wanted capital growth with a small risk to their capital.

- 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 their capital.

- The WMA index is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.

- I consider that Mr and Mrs G's risk profile was in between, in the sense that they were prepared to take a small level of risk to attain their investment objectives. So, the 50/50 combination would reasonably put Mr and Mrs G into that position. It does not mean that Mr and Mrs G would have invested 50% of their money in a fixed rate bond and 50% in some kind of index tracker fund. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr and Mrs G could have obtained from investments suited to their objective and risk attitude.

- The additional interest is for being deprived of the use of any compensation money since the end date.

my final decision

I uphold the complaint. My decision is that Intrinsic Financial Planning Ltd should pay the amount calculated as set out above.

Intrinsic should provide details of its calculation to Mr and Mrs G in a clear, simple format. In order that IFP can carry out the calculations Mr and Mrs G will need to provide it with information and/or an authority so that it can find out the value of the funds on the relevant dates. That is as well as any other reasonable information requests in order that it can carry out the calculations and pay my award.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs G either to accept or reject my decision before 5 November 2015.

David Bird
ombudsman

copy provisional decision

complaint

Mr and Mrs G's complaint is about the advice they were given by Intrinsic Financial Planning Ltd to invest into two investment bonds two ISA's. They feel that the advice they were given was unsuitable and feel that their investments have performed poorly. They are unhappy with the charges, both on the investments themselves and with respect to the amount of commission and remuneration received by the adviser. They say they were unaware of the potential tax liabilities when taking significant withdrawals from the bonds. They also believe that the adviser did not make her 'tied' status clear and led them to believe she was an independent financial adviser.

background

Mr and Mrs G originally met with the adviser in December 2010. As a result of this meeting they were advised to invest:

- £500,000 into a Sterling Investment Bond. The investment was split between two funds – 90% Multi Manager protected profits and 10% Cirilium Cautious.
- £850 per month each into a Sterling Equity ISA. The monthly contributions were to be invested into the Cirilium Moderate fund.

Mr and Mrs G had several meetings with the adviser over the next three years. As a result of these meetings Mr and Mrs G were advised to invest further monies and undertake fund switches on their existing investments.

Mr and Mrs G later complained to Intrinsic about the advice they had received and it issued its 'final response' to their complaint in March 2014. Briefly, Intrinsic said:

- The advice was suitable for Mr and Mrs G's identified needs and circumstances.
- The adviser did not manage the investments on a discretionary basis.
- The cost of the advice was clearly conveyed to Mr and Mrs G. However, it agreed to refund 50% of the fees received.

Mr and Mrs G's representative responded to Intrinsic and rejected its offer. The representative reiterated that Mr and Mrs G had not been given adequate advice and felt the Intrinsic had not fully addressed the complaint. Unhappy with its response, Mr and Mrs G's representative referred the complaint to this service.

The complaint was investigated by one of our adjudicators who upheld it. She was of the opinion that the advice given at outset was not suitable for Mr and Mrs G's objectives.

Mr and Mrs G's representative agreed with the adjudicator's assessment.

Intrinsic disagreed with the assessment and stated:

- It has clearly demonstrated that it was not the intention of Mr and Mrs G to access their money.
- It has clearly demonstrated that the objectives, needs and circumstances changed over the years and that these changes were not known at the time of the recommendation.
- No withdrawals were ever made in connection with a business opportunity.
- Mr and Mrs G have been fully engaged throughout in respect of fund choice and fund switches.
- The adviser has stated that Mr and Mrs G were fully aware of the tax implications in respect of any withdrawals and this was confirmed directly by Sterling in writing following every withdrawal.
- The financial situation and the financial knowledge of Mr and Mrs G has not been taken into account.

As no agreement has been reached the complaint has been referred to me for review.

my provisional findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Mr and Mrs G have raised a number of issues about the advice and this has been supplemented by comprehensive submissions by their representative. Because of the many issues raised in those submissions there are a number of general issues I would like to address before I deal with the specifics of the complaint and the advice Mr and Mrs G were given.

Firstly I would confirm that this service is not a Court. I do not take submissions under oath or cross-examine witnesses as a Court may. This service is an informal dispute resolution service which is directed to resolve complaints quickly and with the minimum of formality. This service is also not the industry regulator (that is the Financial Conduct Authority) and it is not my role to assess a business's general practices or those of its advisers (or suggest remedial action in that respect). It does seem the parties are aware of this and may make separate representations to the FCA.

With respect to the parties submissions I will give each due weight. I will take into account Mr and Mrs G's comments about what occurred when they were given the advice at outset and over time but I will also give Intrinsic's submissions due weight.

I would also confirm that I will consider the suitability of the advice that was given. There may, particularly with regard to issues of investment choice and fund choice, have been many ways to address Mr and Mrs G's needs and objectives but the crucial issue will be whether the advice they were given was suitable or not, not whether Mr and Mrs G could have achieved their aims in a different way.

In terms of the submissions that I have been made, I have considered them all. But I would explain that I will consider in this decision those issues that I believe material to the outcome; I may not necessarily address every point that has been raised.

the investments

The advice to invest in the bond was given in 2010 but I understand that the investment did not take place until January 2011. The financial record of Mr and Mrs G's circumstances completed at the time (commonly called a 'fact find') records that Mr and Mrs G had around £130,000 on deposit. They had also received over £500,000 as a result of a business sale (or sale of shares in a business). It was £500,000 of this amount that was earmarked for a lump sum bond investment.

It was recommended that certain investment funds were chosen to receive the money placed in this bond. Most of the money (90%) was to be placed in the Multi-Manager G2 protected profits fund. The minority (10%) was to be placed into the 'Cirilium Cautious fund'. It was also advised that £850 per month each for Mr and Mrs G be placed into equity ISAs. This was to be invested in the Cirilium Moderate fund.

At the same time an investment was made of £80,000 into an investment bond, which, as I understand it, was earmarked for Mr and Mrs G's children. The money was initially invested entirely in the Multi-Manager G2 protected profits fund.

The following objectives and terms were recorded:

- The main purpose was to, "….. obtain potentially greater growth than you will currently receive in either the bank or building society"
- "Minimum term of the investment: 10"

- “Access to the capital Required? : Yes”
- “The client may need access because: We may need access to the capital for any future business ventures that we may undertake.”

As to “Investments” it was recorded that:

“You wish to ensure that your investments are protected to a certain extent but wish to potentially obtain growth that is greater that you currently receive in the bank or building society.”

There is then a section headed “Attitude To Risk”. This firstly details an “agreed risk profile”‘ of “Moderate”.

However the “Investment Panning Attitude to Risk” is recorded as “Cautious” where it is recorded that both clients would like some form of “protection”. I presume here that the moderate recording was applicable to the ISAs and the cautious grading to the larger bond investments. This is confirmed in the suitability letter of December 2010.

Because regular switches took place I believe it would be relevant to discuss the suitability of the advice at outset, before considering any fund switches made after that date.

my view of the investment advice at outset

£500,000 bond investment - risk of the funds

It is not submitted that Mr and Mrs G did not wish to take any risk at all and the Fact Find and suitability letters detail that some risk could be taken. As to the bonds this was detailed as “cautious”. The suitability letter of December 2010 says that Mr and Mrs G were “cautious” and “low” risk investors but that they could afford to take ‘moderate’ fluctuations in value.

As discussed earlier, the recommendation was to invest 90% of the money in the Multi-Manager G2 protected profits fund and 10% into the Cirilium Cautious fund. However, the statement of the bond holdings as at January 2011 refers to investment in the Cirilium Balanced fund. So I will assume investment took place into that fund.

Both of these funds are ‘multI manager’ funds where an allocation to asset classes such as fixed interest, cash and equities are chosen and then within those bandings the money is placed into many different individual funds managed by different fund providers.

The Multi-Manager G2 protected profits fund appears to have a roughly equal split of equity funds to money market or fixed interest funds.

The Cirilium Balanced fund appears to have (approximately) a split of 45% equity, 35% fixed interest and 20% alternatives -which is made up of property, private equity and alternative investments (alternative being commodities).

With respect to the Multi-Manager G2 fund there is then the 80% protection level which prevents falls in value below that amount. The issue then is whether this combination of asset classes and protection was suited to Mr and Mrs G. Currently I tend to the view that this was not unsuitable.

There has been no suggestion that Mr and Mrs G did not wish to take some risk with their money and actually it has been submitted that their investment should have been split more widely over certain equity markets. That would not seem to accord with their “cautious” outlook originally but, be that as it may, the evidence suggests on balance that some low level of risk was appropriate. So, given the asset split between equity and more cautious money market type funds and the level of protection, the Multi-Manager G2 fund does not present more risk than Mr and Mrs G were prepared to take.

The Cirilium fund does not have that level of protection but it only made up 10% of the overall investment. It also did not have a level of risk that would have made the combination of this fund and the Multi-Manager G2 protected profits fund unsuitable for Mr and Mrs G considering the fixed interest content and spread of investment types.

Overall I could not say what was suggested *originally* was unsuitable. So I do not intend to uphold the complaint on the basis of the risk of the original recommended funds.

isa investment – risk of the funds

The fund chosen for investment was the Cirilium moderate fund. This was a multi-manager fund with, I understand, a split approximately of 60% equity, 20% alternatives (made up largely of hedge funds and private equity funds) and 20% cash and fixed interest funds. This fund is higher risk than the funds chosen for the original bond investments and the financial planning documentation at the time suggests “moderate” risk could be taken with the ISA investments. This is plausible given they were much smaller regular premium investments and not lump sum investments such as the bonds. So I can see why more risk could be taken with these investments.

Given that “moderate” risk assessment and given that it seems to be submitted by Mr and Mrs G’s representative that they could take some risk, I am of the view that this recommendation was likely suitable. I note the submission about the private equity content and appreciate the comments about these largely presenting greater risk but overall the fund choice seems broadly reasonable.

£80,000 bond investment – risk of the funds

I understand that all of the investment was originally placed in the MultI Manager G2 fund. Given what I have discussed about the risks of this fund I do not believe it presents too much risk given the requirements of investing a sum for Mr and Mrs G’s children so they can subsequently use it as a deposit for house purchase.

Aegon ‘GIA’

The recommendation for this investment was given later, in 2013. The suitability letter that Intrinsic has supplied (Mr and Mrs G say they did not get this letter) details that Mr and Mrs G had a lump sum of £75,000 to invest for growth. They were classified as “moderate risk” investors for this investment which is described as investors willing to take risk and risk of capital loss. I understand all the money was placed in the Cirilium Moderate fund within the GIA, which is a unit trust.

My view here is similar to that reached as to the ISA investments and for the same reasons. Although this was a lump sum investment, given the risk rating and submissions about risk, I am not persuaded Mr and Mrs G could not take the risk of investing in this way. Being a unit trust the GIA does not have the same tax implications as investing in an investment bond and allows them to make use of their capital gains tax allowance.

So I am not of the view this advice was unsuitable. .

diversification

Whilst it is put forward that investing in one or two ‘multI manager’ funds is questionable from a diversification point of view, I believe sufficient diversification took place. I would agree that multi-manager funds are subject to one management approach insofar as the manager of that fund will have to take decisions as to asset spread and the individual investment funds contained within. However there is conversely a very wide spread of investment achieved across many different fund managers.

Consequently I believe sufficient diversification was achieved originally and I am not intending to uphold the complaint on this basis.

switches

What switches were actually made is somewhat unclear and it seems that some of the switches that were recommended in the suitability letters may not have taken place. This is because the statements issued by the bond provider suggest different holdings than recommended in some of the suitability letters. The parties, especially Intrinsic, may wish to clarify these matters when they respond to this decision.

As I understand it, the investment into the £500,000 bond was not maintained in its original form for long and in early 2011 a switch was made.

In February 2011 in would appear a switch was made in that 10% of the Multi-Manager G2 protected profits fund was moved to the Cirilium Balanced fund.

Given the makeup of Cirilium Balanced fund I am of the view that the risk of the bond still fell within the likely cautious approach Mr and Mrs G had at outset.

The suitability letter of 14 July 2011 then refers to a recommendation to move 50% of the 'money' held in the bond into the Invesco Perpetual Income Fund with the remaining 50% being held in the Cirilium Cautious fund (which I assume to be the balanced fund as I cannot find record of a "Cautious" fund). However the bond statement records, as at 5 January 2012, that the majority of the money was still being held in the Multi-Manager G2 protected profits fund, with the remainder (somewhat over 20%) being held in the Cirilium Balanced fund. So it would appear that the switch in February 2011 did take place but the switch recommendation in July 2011 did not.

I think at this point I would say that I am concerned why only a few months into the investment that was supposed to be held for the long term the adviser would be suggesting fund switches to this extent. Variously, 1 and 6 months after the advice to invest in certain funds had taken place the adviser was suggesting major changes to that selection based on fund performance. I would question how a reasonable assessment could be made over that period or how the adviser could have thought that such changes were warranted so early in what was (according to the records) a long term investment where funds are normally to be held for years and not months, so as to even out any volatility.

This does not appear to be an investment where regular fund switches were to take place; there is no indication of that when the investments were set up. I have not seen that this was proactively sought by Mr and Mrs G and this seems to have been proposed directly by the adviser.

Having said that, as at the end of 2012 the investment, in terms of risk, still seems to have been within Mr and Mrs G likely parameters.

The bond statement for January 2012 to January 2013 suggests that two large switches have been made. As at January 2013 all the money is held in two funds called "Defensive Equity & Bond" and "Equity & Bond".

I have not seen any emails or suitability letters which refer to this switch. I have therefore not seen explanation as to why the switch was made. There is one email dated 23 January 2012 that I have seen from Mrs G to the adviser which mentions moving £50,000 to "moderate" investments to "see how that performs" and that Mr and Mrs G are happy with that. So it seems there was some discussion about taking somewhat higher risk with part of the investment (that seems to be about 10% of the original investment).

However, that does not tally with the total switch to the Equity & Bond funds, which the records indicate happened towards the end of 2012. Although these funds have a high fixed interest content they also contain a similar amount of equities. They will be volatile funds to a certain extent and do not have any 'collar' below which the value cannot fall (as the Multi-Manager G2 fund did). This does not seem to accord with the original recommendation and assessment of Mr and Mrs G as 'cautious' and them requiring an element of protection.

After this point the position does not seem to have improved (n terms of Mr and Mrs G's exposure to risk) because between 2013 and 2014 further switches appear to have been made so that by the beginning of 2014 most of the money was invested in either the Invesco Perpetual Income fund or the Cirilium Moderate fund. The minority of the money was in the Equity and Bond funds. The Invesco and Cirilium moderate funds are essentially equity funds. So there has been a significant move away for the original risk exposure Mr and Mrs G appear to have agreed to, without any re-assessment of Mr and Mrs G's risk tolerance.

I consequently believe that the switches at the end of 2012 were unsuitable because they raised the risk level to a higher level than Mr and Mrs G were likely prepared to take. Because of this I currently intend to order a calculation is carried out to assess if Mr and Mrs G have been caused loss by this.

With respect to the £80,000 bond, similar switches seem to have taken place. A switch of the entire investment seems to have been made in November 2012 to the Defensive Equity and Bond fund. In May 2013 another switch took place – this time transferring all the investment to a 50/50 split between the Cirilium Moderate fund and the Invesco Perpetual fund.

Given that, with respect to this investment, Mr and Mrs G were again deemed only wanting to take low or cautious risk when the investment was recommended, I have the same concerns with the switches as I have with the £500,000 investment. I have not seen currently seen justification for the switches with respect to the increased risk exposure. I therefore intend to order the same comparison as the £500,000 bond be undertaken for this investment.

fund charges

As to the ongoing annual and management charges applied to the funds by the fund providers, it seems to have been submitted that these are high and not warranted. The charges applicable to 'multi-manager' funds are usually somewhat higher than direct investment into the underlying funds because, in addition to the charges applicable to the individual funds, there are the charges on the 'multI manager wrapper' that holds those funds. The potential benefit, as discussed earlier, is that wide diversification can be achieved over many individual fund managers without having to incur the administration of investing in those funds individually or undertaking ongoing monitoring of them.

So the charges are generally somewhat higher than direct investment in the underlying funds but not so high that they are onerous. I do not believe the slightly higher charges mean that the advice to invest in multI manager type funds was unsuitable and there were potential benefits of doing so. So I do not intend to uphold the complaint on this basis.

charges made by the adviser

It is my understanding the Mr and Mrs G submit that the deductions and charges against their investments were never made clear.

Having said that, the commission generated was detailed on 'illustrations' for the investments.

It is normal that an adviser will be paid for the advice that they give and it is apparent that Mr and Mrs G did know they were paying something for the advice; their emails detail that, even based on their understanding, the sums paid for advice would be significant. Having said that, there does appear to be significant confusion about exactly what would be deducted or charged overall. I note that Mr and Mrs G minuted a meeting they held on 29 November 2013 with the adviser in which they noted that the adviser had confirmed that there were no "set up charges made by you for our initial investment of £580,000". The adviser does not then seem to have disputed this point.

However, there was a significant commission payment to the adviser for those investments; the illustration notes total payment approaching £24,000 for the £500,000 alone. Whilst that may not be deemed a 'set up' fee and was not paid up front by them, it is certainly a cost to Mr and Mrs G which is factored into their investment over time. So it would be wrong to create the impression that there were not costs applicable to the creation of the investments.

I also note the confusion about the ongoing fees and whether this would be 0.5% or higher.

There is certainly an argument that given the lack of certainty as to the costs, and some certain flaws in the advice that have in my view occurred (switching, tax structure of the bond), that a reasonable resolution might be to refund all the commission payments on the investments.

However, Intrinsic has made an offer to refund some of the commission. It seems it has offered to refund half of the commission generated on the £500,000 and £80,000 investments. This is a considerable amount. Given that the adviser did provide service over some considerable time and as I do not believe all of that unsuitable, refunding half the commission feels like a fair resolution to me. So I do not currently intend to make a further award in that respect.

tax treatment

The ISAs are a tax efficient investment where Mr and Mrs G can withdraw their money at any time. It is does not have any penalties on encashment or any further liability to tax. So in terms of tax treatment I do not believe there is any unsuitability.

It is submitted that the two bond investments were chosen because of the ability to take withdrawals of up to 5% per annum without incurring an immediate tax liability and the ability to defer tax into retirement. There is indeed that option but what Mr and Mrs G say is that it was also envisaged they might need to withdraw more than that and what they were not told is that they may incur a significant tax liability if they withdrew more than 5%.

I have considered the suitability letter of 22 December 2010 (which Mr and Mrs G say they did not receive but Intrinsic say would have been sent) and I note it does not contain any information about what would occur if they withdraw more than 5% per annum. This is particularly important because the very particular nature of this type of bond means that a tax liability can be incurred if taking more than 5% withdrawals, even when a profit has not been made.

Mr and Mrs G say they were never informed about the potential for such tax liabilities and were also not informed by the adviser prior to them making such withdrawals. Whilst, as I understand it, Intrinsic say that the adviser would have explained such verbally, Mr and Mrs G clearly dispute that and I have currently not seen any documented advice about the potential for tax liabilities given by the adviser.

Bearing that in mind, the suitability of the choice of this type of bond is particularly affected by the likelihood of Mr and Mrs G requiring access to more than 5% of their investment per year (which for the £500,000 would be about £25,000). There has been a significant amount of submissions on this point by both parties and I have considered everything the parties have said.

Intrinsic seems to put forward that access to large amounts of capital was never envisaged and this is supported by comments from their adviser. However, if that were the case then I would question why it was recorded on the Fact Find initially that they might need access to the capital for "business ventures". Mr and Mrs G have made it very clear that they also required access (for whatever reason), including for business purposes. The suitability letter of 22 December 2010 also records (with respect to the £500,000 bond),

"You expect that you might need access to your capital during this term because you may see future business ventures that we might wish to get involved with."

It would seem to me therefore that, regardless as to whether Mr and Mrs G did receive the suitability letter, both the adviser and Mr and Mrs G were of the view that access could be required. Intrinsic seem to say that access was not envisaged but it clearly was. It is possible that it was only envisaged that withdrawals would be less than 5% per year but I think that less likely. The need was not merely for a regular income but access if business opportunities arose. That suggests the distinct possibility that more would need to be withdrawn than 5%. The adviser should have known that this could cause significant tax liabilities, especially given that Mr and Mrs G were both already higher rate taxpayers and were likely to remain so. Given this I believe the choice of the bond structure for Mr and Mrs G was not suitable and I am intending to uphold the complaint on this basis.

I note that, in the event, Mr and Mrs G may have required access to their money for not just business purposes but for other matters but I do not believe this materially affects my view; access was required and foreseen at outset and this made the choice of the bond unsuitable at outset. It does not then matter what they withdrew large sums from the bond for.

However, it has also been put forward that Mr and Mrs G should not have invested at all because they had a very short timeframe before the money was needed for home improvements. I have not seen sufficient evidence of that. The correspondence between the adviser and Mr and Mrs G as to the withdrawals being taken over time do not suggest that it was always envisaged that all or the majority of the money would be withdrawn after a short timescale, rather than access to significant proportions as I have discussed. So I am not intending to uphold the complaint on the basis that the entire bond was to be wound up with a few years.

With respect to the £80,000 bond, the suitability letter of 12 Jan 2011 records that Mr and Mrs G will need access within 10 years because the money was earmarked to help with house purchase (for their children). Given the ages of the children this was seen as likely and this did occur relatively soon after the investment was made. Again the bond structure created the likelihood that a tax liability would occur. Therefore my view is that the choice of the bond structure for this investment was unsuitable for the same reasons as the £500,000 investment.

adviser status

Mr and Mrs G submit that they were led to believe the adviser was an ‘independent financial adviser’ (IFA) when she was actually a ‘tied’ adviser and represented Intrinsic. Intrinsic say that the adviser made it clear what her status was and supplied documents that demonstrated this.

It is difficult to establish what occurred now with any certainty. However I do not believe this issue would affect my findings.

I say this because it cannot be established if this has caused any loss. In isolation the advice provided by an IFA is not necessarily better that tied adviser. There is no certainty that if Mr and Mrs G had taken advice from an IFA that their position would be improved, say in terms of the value of their investment. It is also not possible to calculate what any ‘improvement’ might have been.

This is bearing in mind that I am making an award where I think the service or advice was lacking.

So I do not believe any further investigation into this issue is necessary.

I note also that there has previously been mention of ‘misappropriation’ of funds but it is my understanding this has now been resolved.

redress

As discussed, my current opinion is that the 2012 fund switches I have discussed with respect to the £500,000 and £80,000 investments, were unsuitable. I also believe the choice of bond ‘wrapper’ for the investments was unsuitable. I do not believe the ISA investments unsuitable.

Given this, I currently intend to make the following award of (A + B + C), where,

A) With respect to the tax abilities that the choice of bond created (£500,000 and £80,000 investments) these should be paid by Intrinsic. Mr and Mrs G would need to provide evidence that the tax liabilities have been incurred and will have to be paid.

B) The current offer to refund half of the commission created initially by the investment into the £500,000 and £80,000 bonds.

C) With respect to the switches in 2012, I believe a comparison should be undertaken with indices to calculate if a loss has been caused.

In respect of (C), in assessing what would be fair compensation, I consider that my aim should be to put Mr and Mrs G as close to the position they would probably now be in if they had not been given unsuitable advice.

Mr and Mrs G should not have been invested in the switched funds. It is not possible to say *precisely* what they would have happened otherwise, but I am satisfied that what I have set out below is fair and reasonable given Mr and Mrs G's circumstances and objectives when they invested.

what should Intrinsic do?

To compensate Mr and Mrs G fairly, Intrinsic must:

- Compare the performance of Mr and Mrs G's £500,000 and £80,000 bond investment with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investment. If the *actual value* is greater than the *fair value*, no compensation is payable.

Income tax may be payable on any interest awarded.

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
£500,000 and £80,000 bond investments	still exist	for half the investment: FTSE WMA Stock Market Income Total Return Index; for the other half: average rate from fixed rate bonds	date of switches to Equity and Bond funds	date of my decision	8% simple per year from date of decision (if compensation is not paid within 28 days of the business being notified of acceptance)

actual value

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

fair value

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

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, Intrinsic should use the monthly average rate for the fixed rate bonds with 12 to 17 months maturity 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.

Any withdrawal, income or other payment 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 are a large number of regular payments, to keep calculations simpler, I will accept if Intrinsic totals all those payments and deducts that figure at the end instead of deducting periodically.

why is this remedy suitable?

I have chosen this method of compensation because:

- Mr and Mrs G wanted capital growth with a small risk to their capital.
- 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 their capital.
- The WMA index is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.
- I consider that Mr and Mrs G's risk profile was in between, in the sense that they were prepared to take a small level of risk to attain their investment objectives. So, the 50/50 combination would reasonably put Mr and Mrs G into that position. It does not mean that Mr and Mrs G would have invested 50% of their money in a fixed rate bond and 50% in some kind of index tracker fund. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr and Mrs G could have obtained from investments suited to their objective and risk attitude.

Mr and Mrs G may need to obtain professional assistance to calculate the tax liability they have incurred through taking out the bonds if Intrinsic does not accept their submissions on this issue. If Intrinsic does not and professional assistance need to be sought, then Intrinsic would have to pay the reasonable costs of that.

In addition, and regardless of any other losses incurred, Intrinsic should pay Mr and Mrs G £500 for the inconvenience caused by the advice they were given.

my provisional decision

I uphold the complaint. My provisional decision is that Intrinsic Financial Planning should pay the amount calculated as set out above.

David Bird
ombudsman