

complaint

Mr A's complaint is that:

- The investments recommended by BALPA Financial Solutions Limited ("BFS") exceeded the level of risk he was willing to take, due to an overconcentration in property investments – BFS did not inform him of the associated level of risk.
- BFS' advice to transfer pensions to SIPP's was poor due to costs involved in the switch and on-going commission.
- BFS has failed to provide details of all the trail commission received from his investments.
- BFS failed to make the investments over a period of time to take advantage of 'pound cost averaging'.

background

One of our adjudicators considered this complaint. It was her view that the complaint should not be upheld. In summary the adjudicator's view was that:

- The investments recommended by BFS were suitable for Mr A given his attitude to risk and investment mandate. She acknowledged that Mr A had a significant proportion of his portfolio invested in property. However, given his previous experience in commercial property and his strong preference for this asset class, she was satisfied he was aware of the potential risks involved and that it was not unsuitable advice.
- BFS was not at fault for not recommend reducing the exposure to property. Further investments made after Mr A's revised attitude to risk were recommendations to invest in more cautious products in order to rebalance the portfolio.
- The charges involved in the SIPP investments were not excessive and that the recommendation was suitable given the size of his pension fund. It also offered the potential for income drawdown which was not available with Mr A's existing provisions.
- It was not necessary for BFS to disclose details of all the trail commission on Mr A's investments over the duration of the portfolio. BFS is not legally obliged to do so and as a refund of trail commission was not part of the complaint, she saw no reason to ask BFS to do so.

Mr A did not agree with the adjudicator. The following is a brief summary of what he said:

- He was an inexperienced and reluctant investor. As such his commercial property and residential letting purchases were not for investment purposes; the hazards of liquidity and other risks in property funds had never occurred to him, or been explained by BFS.
- He chose to invest with BFS as he believed it was a "fatherly" organisation and he paid for its services on the basis he would get a superior service. At no point did he agree to an advisory service – as an inexperienced investor he always wished for BFS to override his investment suggestions.

- In 2007 his attitude to risk changed to “cautious/medium” and yet BFS did not use measures available to it to reduce his risk. Declared risk level is paramount and takes priority over all other considerations when recommending any investment, yet there is no evidence BFS took steps to take account of the risk level change.
- It was BFS that recommended all the property investments, totalling 33% of his portfolio. He considers that no more than 10% of his portfolio should have been invested in any one asset class to ensure diversification and 10% in property should have been the limit for a medium risk investor. Losses should therefore be calculated on the assumption that 23% of the portfolio was negligently invested in property.
- BFS ought to have advised that investments could have been spread over time to take advantage of pound cost averaging – the adjudicator failed to consider this in her letter.
- It is reasonable to request information as to the trail commission BFS has received. Mr A considers it dishonourable that BFS continue to accept trail commission once it ceased to provide any services to him.
- BFS should not have recommended more than £50,000 be invested in any one fund as the Financial Services Compensation Scheme limit is £50,000 and he would not have been able to recover more than this.
- The adjudicator made assumptions in reaching her conclusions. This included an assumption that he had a preference for property based on one line in an email. She also failed to comment on the losses from the property investments and to take note that BFS had offered compensation on his partner’s related complaint – which was an admission of wrongdoing.
- The advice to invest in SIPPs for choice/flexibility was unnecessary as 25% tax free cash could have been taken through a number of pension arrangements. For this reason the fees involved were excessive and the SIPPs provided little benefit.

BFS agreed with the adjudicator but made the following observations:

- Whilst it did not recommend the sale of some of the property investments when Mr A changed his attitude to risk, it reduced the risk profile of the portfolio as a whole by recommending that new money be invested in more cautious investments. It did not wish to crystallise losses on the property investments as, taking a long term view, BFS remained confident these investments would recover.
- This recovery is shown in the aggregate value of Mr A’s portfolio, which has significantly increased in value (nearly 50%) over the period 2009-2013 (when the business relationship ended).
- As per its terms of business it was agreed that the portfolio would be managed on an advisory basis. BFS is not authorised to manage investments on a discretionary basis.
- BFS considers Mr A’s partner’s complaint to be a separate issue and not relevant to the particular circumstances of this complaint.
- Mr A had significant investment experience and had a long history investing in financial products.

- The SIPP plan used for Mr A was a deferred SIPP. Any additional charges for self-investment were only applied when that facility was used. As Mr A was only advised to invest in insured funds within the SIPP, only standard fees applied which were broadly the same as those applicable to a straightforward personal pension plan.
- The Financial Ombudsman Service does not have the jurisdiction to consider the complaint relating to “pound-cost averaging” or the sale of investments ahead of market downturn as these were raised in the initial complaint and so are time-barred.

my findings

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

When deciding the outcome of Mr A’s complaint I have looked at the individual circumstances of his complaint. I am aware that a complaint made by Mr A’s partner has been upheld. However, it does not follow that Mr A’s complaint should therefore be upheld. The outcome will be determined by the particular circumstances of Mr A’s complaint.

I would also like to apologise to both parties for the error in my earlier jurisdiction decision. In this I inadvertently listed the issue of ‘pound cost averaging’ as one of the new issues raised by Mr A in late 2012. This had in fact been part of the original complaint made by Mr A in February 2012.

However, in her letter to Mr A in October 2014 the adjudicator explained why she did not think such a complaint would in any event be upheld. I agree with the arguments put forward by the adjudicator. Spreading a lump sum investment over a period of time sometimes works and sometimes doesn’t work in improving returns. Some advisers recommend such an approach, others don’t, it is not a universally accepted method of making investments. Therefore in any event I would not have upheld this part of the complaint.

The principal concern of Mr A is that his portfolio was over exposed to property investments. He considers this led to an increased level of overall risk – beyond the agreed level of risk for his portfolio. As the adjudicator has said, the poor performance of a portfolio (or indeed a particular asset class within a portfolio) is not sufficient to uphold a complaint.

When Mr A became a client of BFS in 2005, he completed a fact find detailing his personal circumstances, attitude to risk and investment experience. This records that Mr A had a significant proportion of his wealth tied up in commercial and residential property. In addition to this Mr A had an investment portfolio worth around £190,000. He was a relatively experienced investor having had investments for a number of years (going back to the mid 80s). When I say Mr A was an experienced investor I do not mean he was an expert investor. However, someone who has held investments for a number of years will have had first hand experience of the risks and rewards of investments linked to the stockmarket. Mr A would also have had first hand experience of the potential risks and rewards of property investment. During the time he was the co owner of a substantial commercial property he would have seen its value fluctuate significantly (both up and down).

It was agreed that Mr A’s attitude to risk was “medium”, and the portfolio was to be managed on an advisory basis. With this service Mr A would have the final say in deciding whether or not to accept the recommendations made.

I note that Mr A has stated that BFS was in charge of investment decisions and that their advice overrode his considerations. It is reasonable for an adviser to take into consideration an investor's preferences when formulating his advice. However, I agree with Mr A that this does not mean that these preferences override the obligation to provide suitable advice. I am satisfied that Mr A had a clear preference for a substantial investment in property. Therefore whilst accommodating this preference might well result in an above average exposure to property it does not mean that it was reasonable for the adviser to recommend an over exposure to property.

In looking to maintain his exposure to commercial property Mr A could reasonably have been expected to be aware that he was exposed to an asset that could move significantly up or down in value. Mr A's commercial property interest was sold in early 2007 and Mr A wished to invest £200,000 of this. In an email to BFS in April 2007 Mr A said:

"I feel that the sale of the commercial property has moved the balance of my whole portfolio away from property so I would look towards some new investment in some form of property (not necessarily all in UK)."

Mr A's preference for property was long standing. In December 2005 he had e-mailed the firm and said the following:

'I am considering the purchase of a second capital bond now; perhaps 50% general managed fund and 50% commercial property.'

I consider that it was reasonable, in the circumstances, for the firm to have recommended an above average exposure to property investments for an investor with significant experience of this asset class. This does not however mean that this it would be reasonable for the adviser to recommend an excessive exposure to property.

Mr A has provided evidence of what he considers to be the appropriate exposure to property for a medium risk investor. There are no hard and fast rules about portfolio construction and in particular what the maximum exposure to property should be. Mr A's sample of four advisers does not give a comprehensive overview of the market and in my view does not establish normal market practice as regards property exposure. For example Aviva (the largest UK life insurer) has a with-profits fund that currently is around 20% invested in property. I am satisfied that the property exposure in Mr A's portfolio was higher than would typically be seen for a medium risk investor and was at the upper end of what would be considered suitable. However, particularly given Mr A's clearly expressed preference for a significant exposure to property, I am not persuaded that the overall portfolio was unsuitable for Mr A.

Mr A later slightly reduced the level of risk he was prepared to take. This was from moderate to *'cautious/moderate with the emphasis on moderate'*. In response to this the firm recommended investing new money into lower risk funds (the advice was not accepted in its entirety). I consider this advice was in the circumstances reasonable. The change in risk could have been achieved by reducing the exposure to property. Given how property investments later performed this would clearly have produced a better outcome for Mr A. However, this is only apparent with the benefit of hindsight and I do not consider the firm was at fault in not giving this advice.

SIPP charges and advice

I am satisfied the charges related to the SIPPs were properly disclosed to Mr A. In an e-mail in June 2006 Mr A confirmed the recommendations along with his understanding of the charges, stating:

*"I understand BFS charges (direct or indirect in relation to the above are:
3% for ISA.
2% for SIPP initial set up.
0.75% for SIPP additional funds.
0.5% annual management."*

I note in Mr A's response he has stated that the cost of transferring his Defined Contribution pension into his SIPP was £3,000. BFS has provided me with detailed information as to the monies paid into Mr A's drawdown arrangements and the fees received in return. The actual charges made are lower in percentage terms than the above illustration and slightly lower than the figure indicated by Mr A.

I also consider that the pension advice Mr A received was suitable. I reached this conclusion for the following reasons:

- I do not consider taking tax free cash to have been particularly risky advice – this could have been used for further investment or kept as savings etc.
- Recommending a SIPP was suitable advice. For a 'medium' risk investor the SIPPs gave a much wider choice of investments in which to put the remainder of Mr A's pension fund than the existing plans, and this in turn could potentially lead to greater capital growth. At the time Mr A was employed and had plans to continue working part-time once he retired. Mr A also had other income from his commercial property and therefore was not totally reliant on income drawdown or a fixed income guaranteed for the rest of his life, so I consider it reasonable to have recommended an investment vehicle that enabled Mr A to vary and control his income.
- Though drawdown is available by other means, this was a deferred SIPP plan and so additional charges for self-investment only applied as and when Mr A used this. Only provider funds were invested in and so the provider applied its usual fees, broadly in line with those applicable to its straightforward pension plan.

does BFS have a duty to disclose all historic trail commission it received on investments made by Mr A?

Mr A is a long standing client of BFS and to provide the information about trail commission he wants would involve a considerable amount of time and effort by the business. A concern of Mr A is that the firm did not proactively advise him to reduce his higher risk investments such as property ahead of a downturn in the market. Mr A bases his argument in part on the fact that the business receives trail commission from the products it recommended. The terms of business which Mr A agreed to did not oblige the firm to provide him with the on-going advice he thinks he should have had. Therefore in the circumstances I do not consider it unreasonable for the firm not to provide the information that Mr A requested.

my final decision

My final decision is that I do not uphold Mr A's complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr A to accept or reject my decision before 23 January 2015.

Michael Stubbs
ombudsman