complaint

This complaint relates to pensions and investment advice received by Mr and Mrs A from Grosvenor Butterworth (Financial Services) Limited. Mr and Mrs A say the advice to switch funds incurred high charges and resulted in financial losses. It was unlikely there'd be sufficient time to recoup these losses before retirement, they said.

M and Mrs A also said the advice to replace their Skandia bond was motivated by financial gain for the adviser. It wasn't because it offered them a better opportunity for growth.

background

The background to this complaint is set out in the attached provisional decision issued in June 2016. Briefly, Mr and Mrs A met with the adviser from Grosvenor Butterworth in 2012. This followed the retirement of their previous adviser. The new adviser reviewed their situation. He then made recommendations about both their investment strategy and their pension planning. Mr and Mrs A accepted much of the advice.

However, they then raised a complaint, saying the advice was flawed. This was on the basis that there was insufficient time to recoup the capital expended on charges before their retirement. The complaint was rejected by Grosvenor Butterworth. It said some of the charges had been incurred by the advice received from Mr and Mrs A's previous adviser.

Mr and Mrs A brought their complaint to the Financial Ombudsman Service. One of our adjudicators assessed the matter but decided it shouldn't be upheld. She said the advice seemed suitable for the agreed objectives. She also said the adviser had given sufficient information in his written financial reports. And so Mr and Mrs A could reach an informed decision about whether or not to accept the advice. Mr and Mrs A didn't accept the adjudicator's findings, though. So the matter's been passed to me for review.

I set out my findings in my provisional decision. Given their level of investment experience, I thought the new funds to be suitable for people with a "cautious-moderate" attitude to risk, such as Mr and Mrs A.

But I said that the advice had to be suitable. This was regardless of the level of their experience and the information provided to them. Having reviewed the evidence, I said much of the advice wasn't unsuitable. But I thought the charges could have been avoided. This included those for the rearrangement of the existing ISAs. And much of the advised fund rebalancing could have been achieved by internal switching without cost.

In relation to the bond, I said the greater tax efficiency achievable through ISAs was enough to justify the bond's surrender. But I didn't see the point in advising that it be moved when an early surrender penalty still applied. Mr and Mrs A's ISA objectives could have been funded from other resources.

In response to my provisional decision, Mr and Mrs A made various points. I've summarised these below:

- They hadn't sought a financial review. Rather, Grosvenor Butterworth carried it out when their adviser introduced them at his retirement;

- They don't recall being selective in the advice they accepted. They thought all of their capital was transferred to Model 4, with none remaining in the Spectrum 3 profile;
- They'd never described themselves as "experienced investors". They said they'd always relied upon financial advisers to make recommendations. They had no personal experience or interest in managing their own portfolios;
- In respect of tax, they relied on their accountant. For pensions planning, they relied on their original financial adviser.
- They disagreed with the information about their income. This was much lower. For this reason, there was little or no tax advantage to be gained by the advice. This was the case both in respect of pensions planning and the ISAs. The advice to transfer the bond to ISAs might have been suitable from a tax point of view. But their concern was with the penalty through surrendering the bond early;
- As to Mr A's pension planning, the single premium of £15,000 could have been paid into his existing pension rather than taking out a new pension;
- Their investment horizon wasn't long. They always envisaged retiring when Mr A was about 65. And so, aside from the salary sacrifice for Mrs A, the pensions advantages were at best neutral.
- They also asked why I'd said I didn't consider the 1% switching charge should be factored in. It was queried as to whether I was saying that factoring in a 1% charge would be to their detriment.

The business also responded to the provisional decision. It said it only had one point to make. It said the investment bond incurred a charge at surrender because of the establishment charge. This was created by the previous adviser's commission. This was paid to him at the start. But it was then recouped from the bond by cancellation of units over a five-year period.

The business said Mr and Mrs A would still have paid this charge if their money had stayed in the bond. So it wasn't fair to expect it to pay them money they wouldn't have received had they remained invested.

The adjudicator also learned that Skandia had added an enhanced allocation of 3.5% at the outset. This was recoverable over seven years, rather than over five years as originally claimed.

As Mr A was of the belief that our facts were wrong in respect of what was transferred to the GB 4 fund, the adjudicator also sought clarity on this point. Grosvenor Butterworth said the entire fund held in Mr A's Open Ended Investment Contract (OEIC) remained invested in Spectrum 3 funds. And so he'd not suffered any new charges.

In respect of the salary discrepancies, the adjudicator asked the business to explain these. It said that previously Mr A had been persistent in correcting any discrepancies. It also said that, when presented with the report detailing his salary, Mr A didn't challenge these figures. And so they were assumed to be correct. Similarly, he'd been recorded as being a higher rate taxpayer in the report. But neither Mr nor Mrs A had challenged this information.

my findings

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

In respect of the advice to establish new contracts for Mr and Mrs A pensions, I remain of the view that the advice given to Mr A wasn't unsuitable. I've noted the additional commentary about the plan to retire when Mr A was 65. But the existing contract had also been written to 75. And so I can't see that this has caused an overall disadvantage. My other comments about that particular piece of advice remain unchanged.

But my view also remains unchanged regarding Mrs A's pension advice. I see no reason why she needed to exit her existing arrangement. The existing plan could have accommodated her requirements and there would have been no new set up costs to make up until her retirement.

I also note that a substantial amount of the capital remained invested in Spectrum 3 funds. To also address the comment about the 1% switching fee not being factored in (as set out in the final part of the redress direction in the provisional decision), this will be to Mr and Mrs A's advantage.

As to the penalty for surrendering the bond, I appreciate that Mr and Mrs A might ultimately have incurred this charge regardless of whether or not the money remained invested. But the effect of early surrender has been to make the balance outstanding payable in one lump sum rather than by way of monthly deductions. The point of the enhanced allocation is to increase the initial investment. The cost of this is offset gradually over the first seven years. This provides the scope for enhanced growth on the basis that the enhancement would be recouped over time. And so I understand the point made by the business. But I still think there'd have been a greater benefit leaving the bond as it was until the encashment penalty was removed.

my final decision

My final decision remains that the complaint should be partially upheld. Grosvenor Butterworth (Financial Services) Limited should calculate redress as set out in the attached provisional decision. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs A to accept or reject my decision before 16 February 2016.

Philip Miller
ombudsman

COPY PROVISIONAL DECISION

complaint

This complaint relates to pensions and investment advice received by Mr and Mrs A from Grosvenor Butterworth (Financial Services) Limited. Mr and Mrs A say the advice to switch funds incurred high charges and resulted in financial losses. It was unlikely there would be sufficient time to recoup these losses before retirement, they've said.

M and Mrs A also said the advice to replace their Skandia bond was motivated by financial gain for the adviser, rather than because it offered them a better opportunity for future growth.

background

Following the retirement of their existing financial adviser, Mr and Mrs A engaged Grosvenor Butterworth to advise them. One of Grosvenor Butterworth's financial advisers met with Mr and Mrs A in 2012 for a review of their financial situation. This adviser assessed their financial needs and agreed objectives with Mr and Mrs A. These included tax mitigation, building up further tax free cash from pensions and overall advice on their portfolio of investments.

The adviser created a financial strategy and set out his recommendations, including the risks and costs of implementation in three written financial reports (one for each of Mr and Mrs A relating to their personal pensions and a joint report for the balance of their investments). These were provided to Mr and Mrs A, together with key features brochures and related literature. This included illustrations of potential future returns.

Mr and Mrs A accepted some of the advice and started the strategy by switching existing funds within Mrs A's Skandia personal pension at a switching fee of 1%. Advice was also accepted to switch funds within an existing Skandia investment bond in Mr A's name into the Skandia GBFS Model 4 Portfolio fund profile.

The recommendation to start a new Skandia personal pension for Mr A with a single premium employer contribution of £15,000 was also accepted. He also accepted the advice to fund this new pension with increased employee monthly premiums. These were to be funded partially by starting drawdown. He would reinvest the resulting pension income from the existing Skandia personal pension drawdown plan along with monthly contributions from Mr A's employed income. To this would be added the regular monthly employer contribution.

However, advice to switch Mr A's funds from Spectrum 3 to the GBFS Model 4 Portfolio within his existing Skandia personal pension drawdown plan (ending 3875) was not accepted and those funds remained in the existing Spectrum 3 fund profile.

Similarly, Mrs A accepted the advice to transfer her existing Standard Life stakeholder pension fund into her Skandia personal pension. She would also amend it so that regular premiums were paid by her employer on her behalf. Personal contributions were discontinued, as recommended by the adviser. She also accepted advice to switch existing pension funds from Spectrum 3 to the GBFS Model 4 Portfolio fund at a reduced charge of 1%. The charge for the pension transfer had been agreed at 3%.

In respect of their investment portfolio, Mr and Mrs A largely agreed with the adviser's recommendations. Despite the existing Skandia bond (which had a surrender value of £43,437) carrying an exit penalty of £1,357, the adviser recommended it be reinvested more tax efficiently using new Skandia ISAs, with some of the capital using up that year's ISA allowance. Some of it would then be held within the account ready to use the following year's allowance.

As such, Mr A accepted advice to take out a new ISA for £11,010 under a Skandia account for the 2011/12 tax year. He also invested a further £10,379 as a collective (non-ISA) investment into the same plan, with a view to moving that capital into an ISA environment without further charge in a future tax year. He also agreed to transfer an existing ISA in the sum of £10,243 from the building society to the Skandia ISA.

Similarly, Mrs A accepted advice to invest the sum of £11,010 into a Skandia ISA. This represented her 2011/12 ISA allowance. She also invested a further £10,379 as a collective (non-ISA) investment into the same plan, with a view to moving that capital into an ISA environment without further charge at a future date. She also agreed to transfer existing ISAs in the sums of £3,881 and £3,280 respectively from two of her building society ISA holdings to the Skandia ISA.

Since their AXA Offshore bond offered guaranteed income from 2016, the adviser recommended they remain invested in that bond. This would be periodically reviewed and Mr and Mrs A accepted this.

Mr and Mrs A then met again with their previous adviser. Following this, Mr and Mrs A expressed dissatisfaction with the advice from their new adviser and raised a complaint. They said the charges were detrimental to their wealth and it was unlikely the new funds would offer sufficient growth to offset these high charges, given the state of the economy and their investment horizon.

Grosvenor Butterworth wrote to them in January 2013 to explain the reasons it wasn't upholding their complaint. It said the advice was appropriate for Mr and Mrs A's circumstances and agreed needs. It also said its charges had been agreed in advance and reduced to 1% where appropriate. It also said that some of the charges Mr and Mrs A had incurred since they'd accepted the advice were actually charges made by their previous adviser. They weren't charges that had accrued as a result of Grosvenor Butterworth's involvement.

Dissatisfied with this response, Mr and Mrs A referred their complaint to the Financial Ombudsman Service.

The adjudicator who investigated the complaint didn't think it should be upheld. Regarding the overall pension advice, the adjudicator concluded that the advice appeared to satisfy the agreed objective of pension planning for Mr and Mrs A. The use of employer contributions, the method of obtaining more tax free cash and of tax efficiency overall, were all consistent with Mr and Mrs A's recorded financial goals.

The adjudicator also noted that two of the three pension plans Mr and Mrs A had set up were arranged via their previous adviser, and not with the new adviser. Further, they hadn't accepted advice to transfer funds from Spectrum 3 to Model 4 for those plans. And so there seemed to be no grounds for upholding a complaint in that respect against Grosvenor Butterworth.

The adjudicator also thought the risk profile of the new funds was consistent with the attitude to investment risk Mr and Mrs A had agreed with the adviser. She also said all of the risks and charges had been disclosed at the outset. She further concluded that the critical yields which were required in order to counter the effects of charges and the length of time Mr and Mrs A would likely have to remain invested in order to achieve these yields had also been set out in the adviser's reports.

On the subject of the bond and the investment advice in general, the adjudicator was of the view that the adviser had set out in the report the advantages and costs of surrender and replacement. The advice seemed consistent with Mr and Mrs A's requirement for tax efficiency.

Mr and Mrs A didn't agree with the adjudicator's findings. They said it was clear the charges couldn't be recovered without taking a higher risk than they intended to take with their capital.

They further said that investments should be cost-effective. Regardless of the extent and detail of the written report, if it was unintelligible to the layman it was useless as a method of ensuring they'd be able to make an informed choice. If the proposed investment was never going to work within the timescale, then the charges couldn't be justified. Mr and Mrs A also raised the issue of cancelling the existing pension plan and replacing it entirely. They said neither the capital nor the income from the plan was needed at that stage (in 2012).

Mr and Mrs A also gave authority to their previous adviser to make a submission on their behalf. This adviser wrote to the adjudicator to say that Mr and Mrs A were issued with several reports, some of which were amended and therefore the entire process (of advising them) wasn't clear. He also said that existing funds could have been switched with no further costs to Mr and Mrs A.

The same adviser was also of the view that the adjudicator seemed to be unaware of what it considered to be the unnecessary switching/transferring advice given by some financial businesses. He said policies such as pensions were changed where there was no need. Charges were generated through switching funds and rearranging the bond.

As agreement's not been reached on the matter, it's been referred to me for review.

my provisional findings

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

To firstly address the aspect of risk, Mr and Mrs A and their most recent adviser have said that the switch out of Spectrum 3 and into GB4 Portfolio exposed their capital to a greater degree of risk than they intended to take with their capital. Further, they've said Grosvenor Butterworth's adviser assessed their attitude to risk and concluded they had an increased tolerance for risk than had previously been the case. Mr A seems to infer from this that the adviser needed their recorded attitude to risk to be "4" rather than "3" in order for the illustrations of future returns to produce attractive results within the timeframe agreed for the investments.

I've therefore reviewed the fact find to see what was discussed about attitude to risk. I note that both Mr and Mrs A completed an investment risk attitude assessment questionnaire which asked a number of questions. These included how long they were willing to invest for, and how they'd feel about generating losses. They also addressed their capacity to tolerate losses and how much risk they'd be willing to accept for the opportunity of increasing their returns.

The questions were fairly comprehensive as far as I can see, and appear to be a reasonably accurate way of assessing appetite for investment risk. Having completed the questionnaire, Mr and Mrs A were categorised as "cautious–moderate, 3-4" from a list which offered "cautious, 1-2", "cautious-moderate, 3-4", "moderate, 5-6", "moderate-adventurous, 7-8" and "adventurous, 9-10".

From these results, and taking into consideration that Mr and Mrs A both described themselves as experienced investors, I'm of the view that Mr and Mrs A were willing to take a degree of risk with their capital. The new funds appear to have offered a reasonable spread of risk. There was a measure of guaranteed capital and low volatility assets and so they don't appear to be unsuitable for a "cautious-moderate, 3-4" profile.

As to the GB Profile 4 and the Spectrum 3 funds, each allocates capital across a broad range of asset classes. It doesn't seem to me therefore that Mr and Mrs A have been exposed to a marked greater risk through the new funds than was the case within their original funds.

Turning now to the matter of charges, I do not doubt that much of Mr and Mrs A's portfolio could have been switched at little or no cost. However, the point of Mr and Mrs A agreeing to meet with the adviser in the first place was to review their financial arrangements. Having done so, they agreed they did have objectives, many of which were associated with being as tax-efficient as possible.

The adviser told them at the outset in the terms of business document what his company's charges would be, and each cost was set out in the financial report, which explained what each recommendation meant and what the cost of implementation would be.

I acknowledge Mr A's comment that written advice, regardless of how detailed, is of little use to the layperson if it is not in an understandable format. However, whilst the financial reports provided by the adviser in 2012 were comprehensive, I don't think they were overly complex. I also note Mr A is a solicitor and both he and Mrs A work in his law firm. They have both described themselves as being experienced investors. On that basis, I'm not persuaded they were unable to understand the information contained within the adviser's reports. If they were, it seems likely to me that they'd have sought clarification.

But it's nevertheless the case that Mr and Mrs A sought professional advice and although they accepted the recommendations, it was the responsibility of the business to ensure that the recommendations were suitable in the first place. And so although I'm satisfied that the charging structure was made clear to Mr and Mrs A, I've also considered whether the recommendations made, and the charges which might have been incurred as a result, were appropriate.

To firstly address Mr A's pension planning, in terms of timeframe, I understand Mr A's point about already being 62 years of age, and planning in terms of run-off insurance with an "aspirational retirement date of 65". Nevertheless, I can't ignore the fact that the income

drawdown pension Mr A had arranged through his previous adviser was set up with a vesting date of 30 July 2024, when Mr A would be 75. The new pension was set up to the same age, so I don't consider Mr A has suffered any disadvantage in this respect. In any event, the purpose of the pension which was set up in 2011 with the previous adviser was to create an opportunity for Mr A to draw down pension income after having taken the maximum possible tax free cash.

In submissions to the adjudicator, Mr A has said he didn't need the cash, nor did he need to start taking the drawdown income. Mr A said he was funding the existing pension anyway and therefore he didn't see the point of the new adviser's recommendation to take the tax free cash, commence drawdown and then fund a new pension.

I've therefore reviewed Mr A's recorded financial circumstances and objectives. Having done so, I've concluded that the advice to start a new personal pension using the maximum available drawdown from the existing pension wasn't unsuitable in all of the circumstances. It met with Mr A's objective for tax efficient pension planning by enabling him to build up a new fund with new tax free cash – effectively benefitting from further tax relief on these contributions.

The new pension, not yet committed to drawdown or any other kind of arrangement, also enabled Mr A to build up a new fund with which to take retirement income at a later date in whatever manner Mr A then deemed appropriate. This fund would also offer increased benefits to Mrs A should she become widowed, including buying an annuity with the residual fund on Mr A's death. Alternatively, she could take the balance as a lump sum (subject to tax) or continue income drawdown.

It also meant Mr A could use the income drawn down from the existing personal pension rather than using his earned income to fund new, larger pension contributions than had previously been the case. The £72,000 of tax free cash withdrawn from the pension when the drawdown started was then available for Mr A to spend or invest as he saw fit.

The financial report dated February 2012 set out in detail the reasons for recommending this strategy, together with the risks, charges and fund information. I consider Mr A was provided with adequate detail to ensure he could reach an informed choice about whether to rearrange his pension and start a new pension plan before he accepted the advice.

As for Mrs A's new pension arrangements, the advice to transfer her Standard Life Stakeholder pension to the Skandia arrangement was given on the basis that the existing plan was in With-Profits funds and a wider choice of funds could be obtained elsewhere. But I do find the point relating to the ability to simply switch funds within the existing arrangement to be compelling. There may have been no exit penalties to transfer away from Standard Life to Skandia, but there were of course then the charges incurred in setting up the new plan.

Irrespective of the time available before prospective retirement, I think that these new costs were unnecessary. If they hadn't been incurred, there would have been no reduction in yield to make up and Mrs A's pension fund would likely have been enhanced. I don't think Mrs A's level of financial sophistication would merit such a move on the basis of an enlarged range of funds available to her. It's likely that any desired move away from With Profits could have been catered for by Standard Life's fund range. I don't think she needed or would have wanted a particularly "exotic" range to choose from at that point in her life.

In relation to the rest of her pension planning, it seems to me that both Mrs A personally and Mr A's company benefitted from the advice to have her contributions paid via salary sacrifice. This enabled a bigger contribution than had been made previously and saved Mrs A from having to use her salary to pay the contribution every month. This also enabled the business to treat it as a business expense to offset against tax.

Turning then to the investment advice, Mr and Mrs A and their former adviser have also said that the advice to surrender their Skandia bond was more for the benefit of the adviser than their own, and that this was an unnecessary transfer of the investment. The evidence indicates that the adviser recommended the rearrangement primarily to satisfy the objective Mr and Mrs A had of maximising their opportunity for tax efficiency. The bond was in a taxed environment, and although a tax deferred withdrawal could be taken each year, the bond proceeds would potentially be taxable upon full surrender. The recommendation was to surrender the bond and use the proceeds while the bond was still within its early exit penalty period. This incurred a penalty, and I'm satisfied Mr and Mrs A were aware of this. But I nevertheless need to consider whether this was a suitable recommendation.

I note that the proceeds were then invested in a Skandia collective investment account, which afforded the opportunity for all of Mr and Mrs A's ISA allowances for the tax years 2011/12 and 2012/13 to be used if they so wished, with the balance being invested in the collective investment account ready for utilising their 2013/14 ISA if they so wished. This means capital that was subject to tax both within the funds and upon withdrawal was moved into a more tax efficient environment with resultant greater opportunities for building up tax efficient capital in future.

But it's unclear to me as to why Mr and Mrs A's ISA allowances couldn't in any case have been funded from other sources. As noted before, £72,000 was released from Mr A's income drawdown arrangement, he didn't need an enhanced income, and there was also approximately £25,000 held on deposit. The bond could therefore have been retained until the surrender penalty was either significantly reduced or removed altogether. This would have had the dual benefit of satisfying the need for tax efficiency through the use of the ISA allowances and not paying an unnecessary surrender penalty at that point.

I'm also not of the view that the ISA funds needed to be moved to Skandia, when it seems likely that a fund switch could have occurred where they were. For similar reasons as above, I can't see why Mr or Mrs A would have needed the wider array of funds offered by Skandia, especially given their recorded risk rating.

my provisional decision

Having considered all of the evidence, for the reasons given my provisional decision is that I partially uphold the complaint.

In resolution of the matter, I'm currently of the view that Grosvenor Butterworth (Financial Services) Limited should undertake the following:

A Establish the current notional surrender/vesting value of Mrs A's Standard Life pension fund as if it had been retained to date.

B Deduct from this the current surrender/vesting value of the replacement Skandia pension.

Both values should take into account any additional contributions made. If there is a loss (i.e. A is larger than B), then this should be paid directly to Mrs A, with a deduction for the tax relief which she could obtain were she to pay this into her Skandia pension to make up the shortfall.

C Establish the current notional surrender value of Mr and Mrs A's ISAs had they remained with their previous provider.

D Deduct from this the current surrender value of Mr and Mrs A's ISAs.

If there is a loss (i.e. C is larger than D), this this should be paid directly to Mr and Mrs A.

C Pay to Mr and Mrs A the surrender penalty incurred on the surrendered investment bond, with the addition of interest at 8% pa to date.

I acknowledge that, unlike the pension and ISA comparison calculation, this does not take account of the charge which was incurred for the transfer of these surrendered funds to the ISAs and collective investment account. But my concern here is with the timing of the transfer and the unnecessary penalty which was incurred as a result – not the actual advice to transfer the bond funds into more tax efficient wrappers. As set out previously, I'm satisfied that Mr and Mrs A had agreed the charging structure and that this may well in any case have been levied upon a later transfer when the penalty no longer applied.

The above comparisons also assume that no switching would have taken place in the existing plans had they not been surrendered. And so the 1% switching fee which would perhaps instead have been levied by the business hasn't been factored into the calculations. I appreciate that this may have happened, but as it's not possible to know exactly what switching would have occurred and the notional values are calculated assuming the same funds were maintained, I don't consider the 1% switching fee should be factored in.

Philip Miller
ombudsman