

## **The complaint**

Miss W complains about the advice and service she received from Heritage Financial Services (IW) Limited trading as Heritage Financial Services, referred to as 'Heritage'.

In summary, she says:

- She didn't receive the service she was promised by Heritage.
- The investment was higher risk than she'd agreed to.
- Her portfolio didn't outperform the benchmark, and the performance of her portfolio was substandard.
- She was encouraged to invest when the markets had fallen but wasn't encouraged to liquidate before the markets crashed in 2022.
- She didn't receive the income in the way it was set out in the suitability report dated 28 September 2021.
- She didn't sign any paperwork to open a SIPP which Heritage did without her, and the application contained mistakes.
- She was given very little time to consider its recommendation.
- Once she moved to a new adviser, Heritage refused to assist her even though it was still named as her adviser.
- Her adviser was rude and sexist to her and Heritage wasn't impartial when responding to her complaint.

## **What happened**

From September 2021 to July 2023, Miss W was a client of Heritage, with whom she had an 'advisory' investment management agreement. I understand that Heritage would recommend changes to her portfolio, which she would have to agree to, before it could act.

During this period, Miss W's funds were invested in an ISA, non-ISA portfolio (personal portfolio), SIPP and an investment bond which were funded mostly on a personal level, but also some of it from her company.

The correspondence between Miss W and Heritage, regarding various queries and concerns, including topping up her pension and ISA as well as general discussions regarding her plans to sell her property and downsize, was usually by email. I understand that this may have been her preferred method of communication.

I understand that the value of her investments fell, and by July 2023 she decided to move her investments to another adviser. In early September 2023 she complained to Heritage but in a final response letter (FRL) dated 22 September 2023 it didn't uphold the complaint. In summary it said that it had provided the service it had set out to and that Miss K made her own decisions in terms of risk.

Unhappy with Heritage's FRL, she referred her complaint to our service.

One of our investigators considered the complaint but didn't think it should be upheld. In summary, she said:

- Miss W received the service that that she agreed to with Heritage. There's evidence that it actively managed her portfolio, only making recommendations when it felt it was suitable to do so. Phone calls were also answered, and emails responded to.
- Only an annual meeting didn't happen. Nevertheless, the evidence shows that she regularly discussed her financial planning objectives, and she was given advice. Therefore, Heritage overall and on balance, carried out its obligations.
- On 4 October 2021 Miss W signed the suitability report (dated 28 September 2021) which recommended a lower risk. However, she insisted on investing in higher risk portfolios. The following was noted on page 6 of the report:
- *"6. Attitude to investment risk & capacity for loss*
  - *You will recall you completed an on-line FE Analytics risk questionnaire. Essentially, this is the amount of risk you are prepared to take in order to meet your financial objectives.*
  - *It also covered if things went wrong (consequential loss) and the amount of your investment you are prepared to lose before you felt uneasy. I can confirm that the outcome was 'Moderate'.*
  - *This risk level is lower than the HFS Portfolio's you have chosen. My recommendation would be to keep the same as the Risk Questionnaire outcome i.e. HFS Risk Level 3, but you have seen how each of the HFS portfolio's have performed and asked to be aligned to the HFS Risk Level 5 for the ISA & PP and the HFS Risk Level 6 for both of the personal & corporate Offshore Investment Bonds."*
- The evidence shows that Miss W opted for a much higher risk than that recommended by Heritage. It was her decision to invest into a level six portfolio so Heritage can't be held responsible for her choice.
- The report also explained the risk of investing in a higher risk portfolio:
  - *"The Portfolio I am recommending and aligning you to the ISA, is the HFS Risk Level 5 Portfolio. This is a Medium to High risk portfolio. The portfolio contains a mix of funds, that covers most countries/regions. You will appreciate, that the funds will have different investment cycles and consequently perform differently to one another, this is known as negative correlation. The value of your investments will fluctuate on a daily basis and is advised for medium to long term. If you were to terminate any of the policies, you may not get back as much as you originally invested and liable to pay tax."*
- Despite what Miss W says, Heritage explained that this was a medium to high risk portfolio. Miss W's use of words – that this was a (very) high risk portfolio – is subjective. Heritage made clear that the value 'will' fluctuate on a 'daily basis'.
- The portfolio was actively managed – she can't argue that it wasn't. Just because Heritage recommended switching funds twice during the time that she was its customer, doesn't mean that it wasn't actively managing her portfolio.
- The evidence shows that Heritage recommended Miss W take no action when the value of her portfolio fell – evidently, it was managing the portfolio during volatile times. For example, it contacted Miss W on the following dates:
  - On 25 February 2022, in response to global market falls, Heritage said: *"Although it pains me to see each fund share price drop, believe me when I say, you must leave it as it is".*
  - On 14 March 2022, in response to the energy crises and Russia-Ukraine crises, Heritage said: *"“Tell me what to do” I hear you cry. “Nothing” is my reply. However tempting, do not surrender your investments."*
  - On 10 May 2022, Heritage said: *"As I speak, I am altering the portfolios".* It

- the recommended that Miss W switch that month.
  - This is further support to the conclusion that Heritage was actively managing her portfolio.
- Although the portfolio was invested in funds which had around 27% exposure in North America there was nothing wrong because Heritage didn't agree a particular geographical sector that it would invest in. In the circumstances it hasn't done anything wrong by investing this amount into the US markets. Put differently, Heritage had an agreement to invest in HFS 5 and HFS 6 risk portfolio, and that's what it did.
- Performance alone is not something that our service would consider a complaint about. That said, there's no evidence that Heritage promised Miss W that her investment would outperform an associated asset benchmark (the benchmark).
- It was up to Miss W to decide whether or not to accept the advice. Heritage had its reasons for advising her not to liquidate her losses.
- Although Miss W says she didn't receive income in the way that she was led to believe she would in line with the suitability report dated 28 September 2021, this wasn't the case. The report (on page 10) stated the following:
- *"11. Planning the income*
  - *I recommend putting aside your first-year income as cash. For example, if you need an extra £30,000, then put this in a cash account and draw down from it over the 1st year.*
  - *There is a cash fund, that earns no interest, but it will be much quicker to buy into the portfolio funds, should the stock markets drop.*
  - *Because of today's relatively high share prices, I recommend phasing the money into the PP over a 12-month period. If there is a big drop in the share values, I will contact you to recommend more money is used to buy shares in the portfolio.*
  - *Because of the relatively low contributions, I recommend the ISA and SIPP is fully subscribed to each year.*
  - *You can take as much income as you like, there is no restriction, but there may be a point where CGT is paid on the PP. Contact me first, and I will advise on this.*
  - *If you need to make an ad-hoc withdrawal, you can take it first from the PP and let the ISA and SIPP grow in value. Both will be beneficial when you retire.*
  - *The table below shows the decanting of the PP to feed the ISA and SIPP.*
  - *The 5% income is only an indication. You can opt for any percentage. If higher, you stand a greater risk the PP valuation will erode at a faster rate. This may suit you over the first few years while your income is low. You can change the level of income at any time.*
  - *Or if it suits, you can arrange for a fixed amount each month or annually. Plus, you can make ad-hoc withdrawals."*
- The above would suggest that no income was planned to be returned from the portfolio. Heritage recommended that Miss W set aside £30,000 into a cash account to draw down from – over the first 12 months – and she'd have to advise Heritage (on an ad-hoc basis) if she needed to withdraw a further lump sum to top up the cash account.
- On 23 February 2023, Miss W emailed Heritage and said: *"Please go ahead and set up AJ Bell and I can send the money"*. On this basis Heritage set up the SIPP for Miss W in line with her instructions to do so and sent her a copy of the paperwork to check.
- There's no evidence that Heritage refused to carry out Miss W's instructions on 1 March 2022. Heritage said: *"You can nominate your own funds, by instructing me to do so"*. Heritage recommended that Miss W switch investments – which was just

before the adviser went on holiday – he asked her to respond within two days or when he returned from his holidays two weeks later. So, in effect Miss W was given up to two weeks to decide what she wanted to do. By 14 June 2022, Miss W was still discussing with Heritage whether to implement the switches. So, she wasn't given a 'very short' time' to decide.

- A platform can and will only change an adviser when it has authority from the underlying customer to do so. In this case, the platform needed something from Miss W, as a consequence of appointing an adviser in place of Heritage.
- Heritage notified Miss W of this process and offered to liquidate any assets in the meantime. In conclusion, Heritage continued to treat Miss W fairly once she had moved to a new adviser. In other words, Heritage didn't refuse to help Miss W resolve issues.
- Heritage wasn't sexist towards Miss W.

Miss W disagreed with the investigator's view and asked for an ombudsman's decision. In summary, she said:

- The investigator has missed certain important points supported by evidence.
- Whilst she made the decision to invest in Portfolio 5, it was the adviser's recommendation. Why would she pay for advice and then make her own decision?
- The investigator has glossed over the fact that portfolio 5 was described as 'medium to high risk' and dismissed the word medium. The investigator also ignored that portfolio 6 was very high risk. Her investment should've been in portfolio 5 not 6, therefore she should be compensated for the difference. A higher percentage of her personal money was invested in portfolio 6 than agreed.
- The adviser claimed that her investment would beat the benchmark – this goes to the core of the mismanagement. Not only did the investment not outperform the benchmark, but it lost a lot of money. Instead of re-aligning the portfolio to his chosen benchmarks, the adviser took a passive approach. He was clueless about unwinding the positions.
- He admitted that he didn't understand the markets. Had he been honest she wouldn't have engaged with him.
- There was meant to be income paid from the money invested from September 2022. Whilst she did set aside some cash for year one – 2021 to 2022 – after a year the investments should've been producing an income but didn't.
- The adviser didn't set up the SIPP correctly, which the investigator has missed. He inputted a lot of incorrect data including her national insurance number and marital status. Whilst this didn't produce a loss, this is evidence of negligence and poor standard of care.
- She's surprised the investigator has found the adviser's long absences acceptable. Despite being a regulated person – responsible for managing people's money – he takes long and frequent trips abroad. This is negligent.
- She asked *"...how is sunning himself for 6 weeks after already doing so for ¾ weeks in Jan being active? Out of the first 3.5 months of the year he as absent for 9 of the 14 weeks. This is 65% of the time."*
- The adviser should've resigned as her adviser, so she disagrees with the investigator's view on this. She had to go through a new due diligence to prove who she was, and it took three months and was a waste of time. If the adviser had been professional the issue would've been sorted much sooner.
- She's surprised that despite seeing the adviser's response to her complaint she doesn't think he's impartial, dismissive, and rude.

Heritage also replied. The adviser said he didn't think that Miss W would 'give up the fight'. He spent so much time giving her a 'first class service', much more than other clients. He'll be pleased when it's over as it has taken a toll on his health.

It's not his fault that Miss W didn't take his advice and keep the money invested. Interestingly, her investments would've fallen more in value if she'd invested in a lower risk portfolio that had a greater allocation of fixed interest funds.

As no agreement has been reached the matter has been passed to me for review.

### **What I've decided – and why**

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

Having done so, I agree with the investigator's conclusion for much the same reasons. I'm not going to uphold this complaint.

On the face of the evidence, and on balance, despite what Miss W says, I can't safely say that Heritage behaved in such a way that this complaint should be upheld.

Before I explain why this is the case, I think it's important for me to thank the parties for their patience whilst this matter has been awaiting referral to an ombudsman. I think it's also very important to note that I very much recognise Miss W's strength of feeling about this matter. She has provided submissions to support the complaint, which I've read and considered carefully. However, I hope she won't take the fact my findings focus on what I consider to be the central issues, and not in as much detail, as a discourtesy.

The purpose of my decision isn't to address every single point raised. My role is to consider the evidence presented by Miss W and Heritage, and reach what I think is an independent, fair and reasonable decision based on the facts of the case.

In deciding what's fair and reasonable, I must consider the relevant law, regulation, and best industry practice at the time, but I'm not bound by this. It's for me to decide, based on the information I've been given, what's more likely than not to have happened.

I don't uphold this complaint, in summary, for the following reasons:

- Despite Heritage recommending a lower risk – namely 'moderate' risk (which is level 3) - Miss W chose of her own volition to go with a higher risk, based on her own analysis – namely level 5 for the ISA and personal portfolio and level 6 for both personal and corporate offshore investment bonds.
- In the circumstances, I can't blame Heritage for Miss W taking a higher risk, and the financial consequences of that. Despite what she says, Heritage described her portfolio as a Medium to a High risk portfolio, which I believe made clear that it ranges from medium risk to high risk investments. In any case, it was abundantly clear that it wasn't a moderate risk and that the risk she chose to go with was much higher than Heritage recommended.
- I note Miss W says that it was the adviser's recommendation to take a higher risk, but his advice, as per the report, was to take a lower risk, however his recommendation was likely to be in accordance with her desire to invest in higher risk.
- Miss W's argument is not supported by the evidence which suggests that it was her idea to take a higher risk, against the adviser's initial assessment, and that by going with a higher risk, she went against initial advice.

- I note Miss K says that this issue isn't accurately reflected in the report, but if it wasn't I would expect her to have raised an issue at the time. Unless she's suggesting that the adviser was 'double bluffing' as it were – in that he said one thing and wrote another – but I've seen no evidence that this was the case.
- In any case, I note Heritage says that the ongoing advice fees (reduced from 0.75% to 0.45%) were stopped in June 2021. So, it's arguable that in this specific scenario Miss W wasn't paying for a service she didn't receive in any case.
- On the face of the evidence, and on balance, despite what Miss W says I'm satisfied that the portfolio was actively managed (in house by the adviser) broadly in line with its agreement – I note Heritage maintains that it was.
- I'm aware that a 'meeting' was missed, but I agree that this isn't a reason to uphold the complaint for the reasons explained by the investigator. I'm persuaded that Miss W nevertheless received the portfolio reviews and reports as well as ongoing advice.
- For example, I note Heritage has confirmed that every month Miss W was emailed about her portfolio 5 and 6, in January every year the portfolio was rebalanced, and she received investment reports twice a year.
- Based on what Heritage says I'm persuaded that Miss W was in constant contact with her adviser throughout her time with Heritage. I note Heritage refers to over 100 emails between the adviser and her. Aside from three emails sent when the adviser was on holiday, I understand that all (if not most) emails were responded to promptly.
- Despite what Miss W says, just because Heritage didn't recommend more than two fund switches during the time that she was its customer – because the adviser felt that the fund was performing well in their own investment sector – doesn't of itself mean that her portfolio wasn't actively managed.
- Put differently, I'm aware that HFS 5 and HFS 6 did receive some fund switches. In the circumstances, and on balance, I'm unable to safely say that Heritage wasn't actively managing the portfolio or adopted a passive approach towards managing the portfolio.
- Heritage wasn't required to make changes for the sake of making changes and to have done so – just to please Miss W or to give the impression that it was actively managing her portfolio – would've been wrong.
- There was nothing concrete to suggest that the markets wouldn't (more likely than not) have recovered, and I can't fault the adviser for having hoped they would and advising her to hold accordingly.
- I'm persuaded that Heritage did what it felt was the right thing to do in Miss W's best interests, when it advised her to leave things as they were, no matter how tempting it was to advise her to sell.
- In the circumstances, and on balance, I can't say that investing in funds that has up to 27% invested in North America was unsuitable for medium to high level investments. I note Heritage says she never raised an issue about this until only recently, which would suggest she wasn't unhappy about it at the time.
- Despite what Miss W says, I've seen no evidence she was given any guarantees or led to believe that her portfolio would for certain outperform the benchmark. Whilst I appreciate it was hoped that it would, not doing so doesn't of itself mean that the advice she received was unsuitable. I'm mindful that Heritage made clear at the outset the general risks involved, despite Miss W looking to do better.
- The above notwithstanding, I agree with the investigator that investment performance alone is not something that we can consider, and besides investment performance is not something that Heritage could predict or control. Neither could it predict the global geo-political situation and the effect of this. Performance is very much dependent on the financial markets. Besides, Miss W decided to take greater risk, so Heritage isn't responsible for any losses that might arise from this.
- I agree that it was up to Miss W to agree or disagree to the advice that she received. Heritage couldn't force her to take a particular course of action. Nevertheless, I can't

say that the advice – not to liquidate her portfolio – was unreasonable. Not liquidating her assets and realizing her losses on the basis that it was a bad time to do so, and the markets were likely to improve, wasn't unreasonable.

- On balance, I'm satisfied that Heritage acted in Miss W's best interests, when it advised her not to do anything, no matter how tempting it was. I think it probably did so in an effort to avoid her crystallising her losses. I note that liquidating her new assets with the new adviser apparently has realised losses over £33,000 but that's not something I can blame Heritage for.
- I'm mindful that when her risk was assessed it was recorded that she wanted a medium investment term between 5-7 years – and still moved her investments after roughly two years.
- On the face of the evidence, and on balance, it doesn't appear that Heritage promised Miss W that she'd receive a specific income. I note the report Miss W refers to makes clear that whilst a simple growth rate of 2% and a 5% a year withdrawal/income has been used, there is no guarantee that the 2% rate and income will happen.
- This probably explains why she was given advice to put aside a lump sum in a cash account to drawdown from over the first 12 months. I've seen nothing to suggest that Miss W asked Heritage to fund her income or any ad hoc lump sums. I'm mindful that general risk warnings were also given whereby it was made clear that illustrations were intended as a guide only and weren't guaranteed and that the investment products were intended as a medium to long-term investment.
- On the face of the evidence, and on balance, I can't agree with Miss W that Heritage acted without her instructions, or that it set up a SIPP without her authority. In other words, I'm satisfied that Heritage set up the SIPP in response to her instructions. I'm not persuaded to uphold this complaint on the basis that there was an error in the application. I'm mindful that there was no financial loss arising from this. Despite what Miss W says, I don't agree that this is evidence of negligence or lack of management of her investments.
- Although Miss W is unhappy about the time it took to set up a new adviser to the SIPP, Heritage wasn't directly involved in the process, therefore can't be blamed for any delays.
- I'm not persuaded that Miss W had an unreasonable amount of time to decide whether or not to implement switches when she was given advice and the option to do so. I note she was given between two days (I think on the basis that she knew what she wanted to do and could let the adviser know sooner rather than later) and two weeks (I think where she wasn't sure and wanted more time to think about her choices).
- I agree with the investigator that Heritage behaved reasonably with regards to her moving to a new platform. Ultimately, Miss W was responsible for providing instructions to her new platform. On the face of the evidence, and on balance, despite what she says I'm unable to say that Heritage behaved unreasonably. Even if it didn't behave in accordance with Miss W's expectation, I'm not persuaded to uphold this complaint on this basis.
- I'm mindful of Miss W's comments, but on the face of the evidence, and on balance, I'm unable to safely say that Heritage was (more likely than not) inappropriate towards her. I note she hasn't provided any persuasive evidence despite being asked to do so by Heritage and the investigator. So, whilst I sympathize with the way she felt, I've no persuasive evidence to conclude that she was disregarded and treated inappropriately. I'm aware that a business is entitled to defend its position and put forward arguments that she's unlikely to agree with. But that doesn't mean she was treated badly.
- In summary, I make the following findings:
  - On balance, I'm satisfied that Heritage provided Miss W with the service that

it agreed to.

- Miss W wanted and agreed to a higher risk. She wasn't made to do something that she didn't want to do.
- No guarantees were given as to how the investment might perform, so I'm unable to say the advice was unsuitable because it didn't perform better. In any case, Miss W decided to move her medium term investments only two years after investing.
- Heritage advised her to invest when the markets were low, and not to liquidate during the market crash in 2022. In the circumstances I can't say that this was unsuitable advice. I'm persuaded that the advice was given in good faith in the hope that the markets would recover. There was no way that Heritage could've predicted the markets going the way that they did following adverse global geopolitical situation.
- There was no guarantee that Miss W would receive an income in the way that she describes.
- She provided instructions to open a SIPP, so Heritage did what it was asked to do. I've seen no evidence that it acted without authority. Even if it made an error this didn't result in any financial loss and therefore is not a reason to uphold this complaint. Whilst Miss W is unhappy about the time to appoint a new adviser to her new SIPP, this was out of Heritage's control.
- Heritage gave her sufficient time – between two days and two weeks – within which to decide whether she wanted to go ahead with a recommendation.
- I'm not persuaded that Heritage refused to assist Miss W once she found a new adviser.
- Whilst I'm mindful of her feelings, I'm unable to safely say that Heritage behaved inappropriately towards her.

I appreciate Miss W will be unhappy I've reached the same conclusion as the investigator. Furthermore, I realise my decision isn't what she wants to hear. But on the face of the available evidence, and on balance, I'm unable to uphold this complaint and give her what she wants.

### **My final decision**

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 29 November 2024.

Dara Islam  
**Ombudsman**