DRN-4770392

The complaint

Mr and Mrs J have complained that Paul Hipkiss recommended investments to them that were unsuitable.

What happened

The background to this complaint and my initial conclusions were set out in my provisional decision, which I issued earlier this month.

My provisional decision said:

"What happened

In October 2021 Mr and Mrs J met with Paul Hipkiss, an independent financial adviser, to discuss their financial planning. Paul Hipkiss completed a fact find for Mr and Mrs J at the meeting.

In January 2022 Mr and Mrs J returned a completed and signed risk questionnaire to Paul Hipkiss, who subsequently issued a financial planning report to Mr and Mrs J.

This report was dated 25 January 2022 and it set out investment recommendations for Individual Savings Accounts (ISAs) and Self Invested Personal Pensions (SIPPS) for both Mr J and Mrs J.

Mr and Mrs J went ahead with the ISA investment recommendations they'd received from Paul Hipkiss and the SIPP investment recommendations they'd received for Mrs J. Mr J didn't go ahead with the SIPP investment recommendations he'd received.

On 19 May 2023 Mr and Mrs J complained to Paul Hipkiss. They said that they'd examined the funds that Paul Hipkiss had recommended to them and had concluded that some of the funds had a high equity exposure. Mr and Mrs J said that they had understood their attitude to risk to be "medium" but thought that the investments recommended by Paul Hipkiss were high risk, so were unsuitable for them.

Paul Hipkiss responded to Mr and Mrs J's complaint on 31 May 2023. In this response Paul Hipkiss said that because Mr and Mrs J were investing for a period of between 15 and 17 years then the investment risk is lower. This was because the investment timescale would allow for any falls in the value time to recover. Paul Hipkiss didn't uphold Mr and Mrs J's complaint.

Mr and Mrs J weren't happy with Paul Hipkiss' response to their complaint, so they referred their complaint to the Financial Ombudsman Service.

One of our Investigators reviewed Mr and Mrs J's complaint. Their view was that the investments recommended by Paul Hipkiss didn't reflect Mr and Mrs J's "medium" risk attitude. Our Investigator upheld Mr and Mrs J's complaint.

Paul Hipkiss didn't agree with our Investigator's view, so has asked for this complaint to be considered by an Ombudsman.

What I've provisionally 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.

I will firstly consider what I think Mr and Mrs J's likely attitude to investment risk was at the time that they received investment recommendations from Paul Hipkiss.

RISK

Paul Hipkiss sent Mr and Mrs J a financial planning report, dated 25 January 2022. In this report Paul Hipkiss said that Mr and Mrs J had surplus monthly income of £500 that they wanted to pay into pensions.

The report also said that Mr and Mrs J had £40,000 of bank deposits, of which £10,000 was to be retained as an emergency fund. The balance to be placed "where it may earn a higher return than inflation over the medium to longer term".

The report said: "We discussed your knowledge and experience of financial products and investments.

• You confirmed to me you have some knowledge and some previous experience of investing".

The report then went on to confirm details of Mr and Mrs J's risk profile and their capacity for loss. The report said:

"Risk Profile

We discussed at some length your attitude to risk and in particular the relationship between risk and reward.

Investment Attitude to Risk: Medium

The aim is to achieve medium to longer term returns in excess of inflation. The majority of investment would normally be in the UK equity market. Consideration would be given to include fixed interest and overseas investment, and commercial property. Portfolio volatility is expected to be moderate.

Capacity tor Loss: Moderate

Your sensitivity to volatility is realistic and you recognise that markets fluctuate and that some short term volatility must be accepted in order to achieve your investment objectives. You have sufficient assets outside of your portfolio and an investment time horizon far enough in the future to withstand medium losses without any detrimental *effect to your living standards.*

If you feel that this does not accurately reflect your attitude to risk or capacity for loss please contact me as a matter of urgency".

The financial planning report recommended that Mr and Mrs J's ISA and SIPP investments be equally split between six funds, so each fund holding 16.66% of their investment portfolio. The report said that the "Risk Rating" of each of these six funds was "medium".

Mr and Mrs J completed and signed a risk questionnaire for Paul Hipkiss. This was made up of 12 questions, with a numerical score being given to the response to each question.

On completion of the questionnaire a "Provisional Risk Category Assessment" was given, based upon the total numerical score from all twelve questions. For Mr and Mrs J the total numerical score from their responses to the twelve questions gave them a "Provisional Risk Category Assessment" of "Medium".

Question 12 of the questionnaire asks: "Which statement best describes your investment objectives". In response Mr and Mrs J indicated two of the possible answers instead of one. They circled both of the following statements:

"I want to achieve higher long term returns than inflation. I understand there may be occasional extended periods where my investments might fall value" and…

"I want the best long-term returns I can get. I fully expect periods where the value of my investments might suffer extended falls".

I've not seen any notes to evidence if there were any discussions between Mr and Mrs J and Paul Hipkiss to confirm which of these responses actually applied to the above question. However, considering all the answers that Mr and Mrs J gave to the questionnaire as a whole, including the numerical score from each of the above responses still leaves Mr and Mrs J with a "Provisional Risk Category Assessment" of "Medium".

In their complaint to Paul Hipkiss, Mr and Mrs J said: "The outcome of this questionnaire, and subsequent discussion, indicated that we would be classed as "medium risk" investors, when also considering our limited investment experience".

I think that Mr and Mrs J are saying in their complaint that they understood thy would be classed as "medium" risk investors, which was based on discussions with Paul Hipkiss and the outcome of the risk questionnaire they completed, which gave them a "Provisional Risk Category Assessment" of "Medium".

The financial planning report prepared by Paul Hipkiss on 25 January 2022 said that Mr and Mrs J's attitude to investment risk was "medium". The report also asked Mr and Mrs J to contact Paul Hipkiss if they felt that this didn't accurately reflect their attitude to risk. I've not seen any evidence to show that Mr and Mrs J did contact Paul Hipkiss after receiving their report to say that their attitude to investment risk wasn't "medium", as stated.

I therefore think that taking all the above into account it's reasonable to conclude that when Paul Hipkiss provided investment recommendations to Mr and Mrs J in January 2022, their attitude to investment risk was "medium".

INVESTMENT RECOMMENDATIONS

I will now consider the investment recommendations given to Mr and Mrs J by Paul Hipkiss and whether they suited Mr and Mrs J's agreed investment objectives and attitude to risk. This was to invest their ISA and SIPP portfolio into six funds, with 16.66% of their portfolio being invested into each fund.

I've seen current Key Investor Information (KII) for each fund recommended to Mr and Mrs J. From the information available to me, I think that five of the six funds invested in UK equities, with the remaining sixth fund investing in global equities.

The KIIs that I've seen give the funds a risk rating based on historical data, using a scale of one to seven, with one being "Lower Risk" and seven being "Higher Risk".

I will refer to the funds recommended by Paul Hipkiss in my decision as Funds one to six inclusive.

The KII for Fund one, which invests in UK equities, says in a section headed "Risk and Reward profile" that the fund is has a risk rating of six "because it has experienced relatively high rises and falls in value historically". The KII goes on to say: "The Fund holds equities concentrated by number and by location in the UK. Equities, as an asset class, tend to experience higher volatility than many other assets such as bonds or money market instruments. Funds concentrated by number of assets and/or geographic location are more vulnerable to market sentiment impacting on one or more of those assets or location and can carry a higher risk than funds holding more diversified assets".

Fund two is a UK equity "Special Situations" fund with a risk rating of five. The KII says: that the fund aims to deliver capital growth over the long term, which is defined as five years or more. The KII goes on to say: "The Fund will invest at least 90% of its assets in companies which are incorporated, domiciled or conduct significant business in the United Kingdom (UK)". The KII also says that the fund will invest in smaller companies.

Fund three is a UK equity "Recovery" Fund with a risk rating of five. The KII says the fund: "aims to provide capital growth by investing mainly in UK shares. It is also intended where appropriate to take advantage of underwritings and placings. The fund may also invest in, but is not limited to, shares in overseas companies and cash". In the section headed "Risk and Reward profile" the KII says: "The fund will invest in the shares of smaller companies which are more volatile over shorter time periods. The fund has a concentrated portfolio which means greater exposure to a smaller number of securities than a more diversified portfolio. The fund may experience greater volatility as a result of this. The fund invests mainly in the UK therefore investments will be vulnerable to sentiment in that market which may strongly affect the value of the fund".

Fund four is a global equity fund with a risk rating of six. The KII says: "The fund's objective is to achieve long-term (over 5 years) growth in value, investing in shares of companies on a global basis". In the section headed "Risk and Return profile" the KII goes on to say: "Concentration risk: The investment criteria adopted by the fund significantly limits the number of potential investments. The fund generally holds 20 to 30 stocks and so it is more concentrated than many other funds. This means that the performance of a single stock within the portfolio has a greater effect on the price of the shares of the fund". The KII does also say: "The underlying investments are, however, in large companies with shares that are, in most cases, highly liquid".

Fund five is a UK equity "Special Situations" fund with a risk rating of six. The KII says that at least 80% of the Fund will be invested in the shares of companies listed in the

UK and that this will include a range of small, medium and large companies. The KII goes on to say: "In any event, at least 60% of the Fund shall be invested in smaller companies". In the section headed "Risk and Reward profile" the KII says: "The Fund will be exposed to smaller companies which are typically riskier than larger, more established companies. Difficulty in trading may arise, resulting in a negative impact on your investment. Shares in smaller companies may be harder to sell at a desired price and/or in a timely manner, especially in difficult market conditions".

Fund six is a UK equity growth fund with a risk rating of six, which will invest in small and medium sized companies. In the section headed "Risk and Reward profile" the KII says: "Smaller company shares can be more difficult to buy and sell as they trade infrequently, in small volumes and their share price may fluctuate more than that of a larger company".

Paul Hipkiss has said that the risk ratings shown in the KIIs should be used for guidance only as they are based on historical data. Paul Hipkiss has also said that the risk ratings that are currently quoted on the KIIs are higher than the ratings that were quoted when it provided recommendations to Mr and Mrs J in January 2022.

Whilst I don't think it unreasonable to consider that the risk ratings shown in the KIIs could be used for guidance, as they're based upon the historical data for the funds, I also think it's reasonable to conclude that the risk of the investment portfolio recommended to Mr and Mrs J wasn't in line with a medium attitude to risk, when taking into account all of the information given in the KIIs and when considering the makeup of the portfolio as a whole.

I say this because I think that the portfolio recommended to Mr and Mrs J by Paul Hipkiss invested in equities only and therefore it didn't provide for any diversity or balance between different asset classes, such as fixed interest securities as an example. I also don't think that the portfolio provided any balance between a mixture of low, medium or higher risk funds.

I think it's not unusual to see a medium risk portfolio containing a mixture of different asset classes and a mix of different risk rated funds, so that the overall risk profile of the portfolio could be considered as medium risk.

But in this case, I think that this lack of diversity meant that the recommended portfolio's performance was reliant upon equities only. I also think that it's reasonable to conclude that this bias to equities increased the risk profile of the portfolio because if equities fell in value, then all of Mr and Mrs J's portfolio fell in value rather than having exposure to other asset types that would not have fallen in the same way. I also think that this meant that the funds recommended by Paul Hipkiss were directly correlated.

I also think that the portfolio was biased towards UK equities. I say this because five of the six funds recommended invested mainly in UK equities without any significant overseas exposure. I think that this also increased risk of the portfolio as its performance was mainly reliant upon one asset class in one geographical location.

I'm of the view that of the five UK equity funds recommended, four of these invest in small and medium sized companies. As is said in the KIIs, exposure to small and medium sized companies will typically involve more risk than investment in larger companies. I therefore think that the exposure to small and medium sized companies increased the risk profile of the portfolio.

I'm of the opinion that the KII documents for funds one, three and four warn of concentration risk. This is because each funds' portfolio is invested into a limited number of companies. I think that investing in a limited number of stocks would reasonably be seen as increasing the risk profile of a fund, and thereby the portfolio as a whole

The KII for fund four says that the fund will generally own 20 to 30 stocks. This is the only recommended fund that invested in equities outside the UK. I think this meant that although a global equity fund was recommended within the portfolio, this was a concentrated fund that provided limited global equity exposure.

Paul Hipkiss has said that that Mr & Mrs J wished to invest over periods of 17 years and 15 years respectively and that "Over such a period the funds recommended would have a lower risk profile and of course could be altered nearing retirement if appropriate. An equity fund would be very high risk if held for say just one year, but the risk level falls as the term extends".

While I accept that over the longer term volatility could be smoothed, I'm of the opinion that the portfolio would still have a higher risk profile due to the reasons that I've set out above. I also don't think that there is any guarantee that because of the timescale that Mr and Mrs J are investing over, the portfolio would recover from any falls in value, as Paul Hipkiss has claimed.

Paul Hipkiss has also said that when considering the risk profile of their portfolio, Mr and Mrs J should also take into account the other savings and investments that they have. Paul Hipkiss says that Mr and Mrs J had cash at the bank and had surplus income. But I think that the investment recommendations had been prepared on the understanding that cash held at the bank was for any emergencies, as this is what was said in the report of 25 January 2022.

I also don't think there is any explanation in the report that Mr and Mrs J should consider their other holdings when determining the risk profile of the recommended portfolio. Instead, I think that the report describes the risk level of each of the recommended funds as "medium". I'm therefore of the opinion that the report described the risk profile of the recommended investment portfolio as "medium" based on its own merits, and not as "medium" risk only when Mr and Mrs J's other holdings were considered.

Paul Hipkiss had also said in the report of 25 January 2022: "Portfolio volatility is expected to be moderate". But as I've detailed above, I don't think that it was reasonable to expect that volatility would be moderate for a portfolio that was only invested in equities, was primarily invested in one geographical location, had exposure across small and medium sized companies and was subject to concentration risk.

As I've said above, I think it's reasonable to conclude that Mr and Mrs J's attitude to investment risk was medium. I also think that it's reasonable to conclude that the portfolio recommended to Mr and Mrs J was not medium risk. So, taking everything into account, I am upholding Mr and Mrs J's complaint."

I then laid out my recommendations for putting the matter right and that Paul Hipkiss should calculate any loss when comparing the performance of the portfolio recommended to Mr and Mrs J with that of the FTSE UK Private Investors Income Total Return index.

Both Paul Hipkiss and Mr and Mrs J have responded to my provisional decision. Mr and Mrs J have said that they've nothing to add to my provisional decision and I have commented on Paul Hipkiss' response below.

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 reviewed the responses, I remain of the opinion that Mr and Mrs J's complaint should be upheld. I'll explain why.

Paul Hipkiss has said at the time that Mr and Mrs J's portfolio was arranged the KIIDs then gave three of the funds a rating of five and the other three a risk rating of six. Paul Hipkiss has also said that when setting up portfolios for clients they will consider the information set out within the KIIDs but will also look at research from a number of different sources and will then take into account various factors including performance history and fund volatility when providing recommendations.

Paul Hipliss has gone on to say that whilst accepting that medium and smaller companies would be expected to show greater volatility than larger company stocks, particularly over relatively short periods, they contend that the recommended funds have demonstrated an ability to achieve "*attractive results with relatively low volatility*". Paul Hipkiss argues that the funds recommended to Mr and Mrs J had lower volatility when compared to the FTSE 100 index and contends that the recommended portfolio is not as high risk as the KIIDs in isolation would suggest.

Paul Hipkiss has also said that greater importance should be given to the timescale that Mr and Mrs J were expecting to invest, rather than the five-year timescale covered by the KIIDs. Also, Paul Hipkiss says that investing in funds in another currency adds currency risk to the portfolio and that many UK company stocks held in the portfolio derive a considerable proportion of their profits from operations overseas.

Paul Hipkiss has added that they believe the complaint is more about the short-term volatility and losses in the portfolio rather than suitability over the expected time frame of the investments and that note was taken of Mr J's existing pension investments at the time. Paul Hipkiss argue that the portfolio recommended to Mr J was complimentary to investments that he already held in respect of both risk and asset choice.

I've carefully considered all the points that Paul Hipkiss has raised, as well as the accompanying data, graphs and information provided. As I'd said in my provisional decision above, the KIIDs gave the recommended funds a risk rating based on historical data, using a scale of one to seven, with one being "*Lower Risk*" and seven being "*Higher Risk*".

Paul Hipkiss has said that at the time Mr and Mrs J's portfolio was arranged the KIIDs then gave three of the funds a rating of five and the other three a risk rating of six. The KIIDs that I referred to in my provisional decision gave four of the recommended funds a risk rating of six and two a risk rating of five. Whilst I recognise that there is a difference in the risk ratings in the KIIDs from when Paul Hipkiss gave advice in January 2022, I don't think that such a small difference is sufficient to move the risk rating of the portfolio to medium risk.

I say this because in my provisional decision I'd said that I thought it reasonable that the risk ratings shown in the KIIDs could be used for guidance, as they're based upon the historical data for the funds. I'd therefore said that I didn't think that the risk of the investment portfolio recommended to Mr and Mrs J was in line with a medium attitude to risk, when taking into account all of the information given in the KIIs and when considering the makeup of the portfolio as a whole. I'd therefore not based my provisional decision of the risk ratings given in the KIIDs alone.

I'd also explained that as the portfolio recommended by Paul Hipkiss invested in equities only, and therefore it didn't provide for any diversity or balance between different asset classes, such as fixed interest securities as an example, I didn't think that the portfolio provided any balance between a mixture of low, medium or higher risk funds. But I've not seen any evidence to change my view on this and I therefore still think that the recommended portfolio didn't provide any balance between different asset classes or a mixture of different risk funds.

Instead, I think that what Paul Hipkiss is saying is that as Mr and Mrs J were planning to invest for a period of between 15 and 17 years then the investment risk of the portfolio was lower. Paul Hipkiss has provided past performance data in support of this argument.

But as I'd said in my provisional decision, while I accept that over the longer-term, volatility could be smoothed, I'm of the opinion that the portfolio would still have a higher risk profile than medium due to the reasons that I've set out above. I also still don't think that there is any guarantee that because of the timescale that Mr and Mrs J are investing over, the portfolio would recover from any falls in value, as Paul Hipkiss has claimed.

If Paul Hipkiss is of the view that because of the timescale that Mr and Mrs J were investing over they could take more risk, then I think it would have been reasonable for Paul Hipkiss to have discussed this with Mr and Mrs J and sought their agreement to take higher risk. But I've also not seen any evidence to demonstrate that this happened, and that Mr and Mrs J agreed to take a level of investment risk higher than medium. Instead, I think that Mr and Mrs J agreed a medium risk profile with Paul Hipkiss and were told that the recommended portfolio was in line with their medium attitude to investment risk.

I'd also said that I don't think it unusual to see a medium risk portfolio containing a mixture of different asset classes and a mix of different risk rated funds, so that the overall risk profile of the portfolio could be considered as medium risk. I've not seen any further evidence to show that the recommended portfolio did contain a mixture of different asset classes and risk rated funds, even accounting for the small difference in the risk ratings quoted in the KIIDs at the time that recommendations were given to Mr and Mrs J.

Paul Hipkiss has said that that whilst accepting that medium and smaller companies would be expected to show greater volatility, particularly over relatively short periods, they argue that the recommended funds have demonstrated an ability to achieve "*attractive results with relatively low volatility*". I note the data that Paul Hipkiss has provided to support this argument. But my view is that even if it were demonstrated that although the funds invested in small and medium sized companies, they had historically achieved relatively low volatility, there is no guarantee that this would continue to apply for future performance.

I therefore don't think that the historical information that Paul Hipkiss has provided can be used as a measure of the future volatility and risk rating of the portfolio.

Paul Hipkiss has said that the portfolio didn't have a bias to the UK as many UK companies held in the recommended funds derive a considerable proportion of their profits from operations overseas. I accept that it's correct that some of the company holdings concerned derive profits from their overseas activities, but I don't think that this meant that the recommended portfolio still wasn't biased toward UK equities.

Paul Hipkiss has said that investing in funds valued in another currency adds currency risk, which I accept. But I think for this reason it wouldn't be unusual for a recommended portfolio to provide a balance between investing in the UK and other geographical locations, as well as different asset classes, in order provide a balance and diversity between different holdings.

Instead, I still think that this lack of diversity meant that the recommended portfolio's performance was reliant upon equities only, with the majority of these equity holdings being listed in the UK. I also think that it's reasonable to conclude that this bias to equities increased the risk profile of the portfolio because if equities fell in value, then all of Mr and Mrs J's portfolio fell in value, rather than having exposure to other asset types that would not have fallen in the same way. I therefore still think this meant that the funds recommended by Paul Hipkiss were directly correlated, and I've not seen any additional evidence to persuade me to change this view.

Paul Hipkiss has also said that the recommended portfolio was in line with the risk rating of Mr J's existing pension investments. But in the suitability report of January 2022 Paul Hipkiss say that both Mr and Mrs J's risk profile is medium, and that the recommended funds are medium risk. I therefore don't think the suitability report is saying that because Mr J's existing investments are higher risk, then further higher risk investments are being recommended. Instead, I think that the report is saying that the recommended portfolio is medium risk, to match Mr and Mrs J's medium risk profile.

I therefore still think it's reasonable to conclude that Mr and Mrs J's attitude to investment risk was medium and that it's also reasonable to conclude the portfolio recommended to Mr and Mrs J was not medium risk. So, taking everything into account, I am upholding Mr and Mrs J's complaint.

Putting things right

I'd set out in my provisional decision above the actions that Paul Hipkiss should now take to put things right for Mr and Mrs J. Paul Hipkiss should now compensate Mr and Mr J as I'd set out in my provisional decision and which I reiterate below.

Paul Hipkiss has said that they will need access to up to date information about Mr and Mrs J's investments to calculate the current value of their portfolio. I think that this is reasonable.

Paul Hipkiss has also asked for guidance on how to calculate valuations of the monthly pension payments that have been paid by Mrs J. In my provisional decision above I'd said that Paul Hipkiss should calculate the notional value of Mrs J's SIPP portfolio at the end date, assuming that Mrs J's pension portfolio had been invested from its start date to the end date in line with the FTSE UK Private Investors Income Total Return index.

I think it reasonable that this calculation includes the value of each of the monthly payments that Paul Hipkiss has referred to, from the start date of each monthly payment to the end date, when determining the total notional value of Mrs J's SIPP portfolio.

I now turn to how Mr and Mrs J should be compensated for the errors identified above.

For the reasons given, I'm satisfied that the portfolio recommended to Mr and Mrs J was not in line with their medium investment risk profile. I therefore think that a reasonable approach would be for Paul Hipkiss to put Mr and Mrs J back in the position they would have been in, as far as is reasonably possible, had it not been for Paul Hipkiss' advice.

Mr and Mrs J have said that they still hold the funds recommended by Paul Hipkiss. This is because they are reluctant to realise the losses made and hope that values might recover.

Paul Hipkiss should therefore make an assessment to consider what, if any, losses Mr and Mrs J have suffered.

In respect of Mr and Mrs J's ISAs Paul Hipkiss should:

- Calculate the current value of Mr and Mrs J's ISA portfolio. I will call the date that Paul Hipkiss values the investments on as the "end date". This valuation should account for all monies paid into the portfolio by Mr and Mrs J. This is figure "X".

- Calculate the notional value of Mr and Mrs J's ISA portfolio at the end date assuming that Mr and Mrs J's ISA portfolio had been invested from its start date to the end date in line with the following benchmark: the FTSE UK Private Investors Income Total Return index. This is figure "Y".

- The notional value ("Y") should be compared with the actual value ("X") of Mr and Mrs J's ISA portfolio as at the end date. If the actual value ("X") is greater than the notional value ("Y"), no compensation is payable. If the notional value ("Y") is greater than the actual value ("X"), there is a loss and compensation is payable.

- If, having completed the calculations, Paul Hipkiss identifies a loss, interest should also be paid on this loss, calculated from the end date to the date of settlement at 8% simple.

Paul Hipkiss should provide Mr and Mrs J with a copy of these calculations.

In respect of Mrs J's SIPP portfolio Paul Hipkiss should:

- Calculate the current value of Mrs J's SIPP portfolio. I will call the date that Paul Hipkiss values the investments on as the "end date". This valuation should account for all monies paid into the portfolio by Mr and Mrs J. This is figure "X".

- Calculate the notional value of Mrs J's SIPP portfolio at the end date assuming that Mrs J's pension portfolio had been invested from its start date to the end date in line with the following benchmark: the FTSE UK Private Investors Income Total Return index. This is figure "Y".

- The notional value ("Y") should be compared with the actual value ("X") of Mrs J's pension portfolio as at the end date. If the actual value ("X") is greater than the notional value ("Y"), no compensation is payable. If the notional value ("Y") is greater than the actual value ("X"), there is a loss and compensation is payable.

- If, having completed the calculations, Paul Hipkiss identifies a loss, interest should also be paid on this loss, calculated from the end date to the date of settlement at 8% simple.

Paul Hipkiss should provide Mrs J with a copy of these calculations.

If there is a loss on Mrs J's SIPP investments, Paul Hipkiss should pay into Mrs J's pension plan to increase its value by the amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief.

Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance. If Paul Hipkiss is unable to pay the compensation into Mrs J's pension plan, it should pay that amount directly to her. However, had it been possible to pay into the pension plan, it would have provided Mrs J with a taxable income. Therefore, the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid.

This is an adjustment to ensure the compensation is a fair amount, it isn't a payment of tax to HMRC, so Mrs J won't be able to reclaim any of the reduction after compensation is paid.

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

However, if Mrs J would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

In their complaint to Paul Hipkiss, Mr and Mrs J say that they have become concerned by the volatility of their funds. I think it’s reasonable to think that Mr and Mrs J will have suffered some distress and inconvenience due to the advice provided by Paul Hipkiss. I therefore think that Paul Hipkiss should also pay Mr and Mrs J £250 in compensation for this distress and inconvenience.

Why is this remedy suitable?

I’ve chosen this method of compensation because I think that trying to replicate how Mr and Mrs J would have invested their pension and ISA portfolios had they not received the unsuitable advice from Paul Hipkiss is impossible to assess. We’re an informal dispute resolution body. With all this in mind, I consider using the FTSE UK Private Investors Income Total Return index as a proxy for the returns Mr and J would have achieved is fair and reasonable.

The FTSE UK Private Investors Income Total Return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index). This index is a set of calculations that demonstrates performance of various asset classes. It’s a fair measure for someone who was prepared to take some risk to get a higher return. As I think that Mr and Mrs J wanted to invest in line with a medium level of investment risk, then I think that it’s reasonable to assume that this is a fair description of Mr and Mrs J.

My final decision

My final decision is that I uphold Mr and Mrs J’s complaint against Paul Hipkiss and that Paul Hipkiss should compensate Mr and Mrs J as I’ve set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr J and Mrs J to accept or reject my decision before 29 May 2024.

Ian Barton
Ombudsman