DRN-5028442

The complaint

Ms K's complaint is about an ISA Shipman Financial Planning Ltd ("Shipman") advised her to invest in. She complains misleading information about the gain her ISA had made led her to follow inappropriate advice from Shipman to invest a lump sum into the ISA in 2021. She also complains about fees she paid to Shipman for its advice.

Ms K says the ISA was the only investment option Shipman suggested to her and it advised her she was investing at a lower risk than other funds she holds. She says the ISA was mismanaged as it went on to suffer losses her other investments didn't suffer.

What happened

Ms K's ISA was provided by a third-party platform provider and was invested in accordance with a model portfolio. The portfolio was mostly collective investment funds managed by various fund managers. The portfolio mix was determined by an associate of Shipman or third-party fund managers appointed by that associate who also managed that mix and those investments on a discretionary basis.

In 2016 Shipman recommended regular payments of £250 each month be paid into the ISA. It was indicated that the money might be needed in future to help with Ms K's children's future education costs, which were more than 10 years off at that point. Ms K says the money would be accessed, at earliest, when a child reached university age.

At the start of its 2016 report, Shipman explained its advice would take into account only a limited number of options. It said: *"The advice provided in this report is given on a restricted basis. This means that I have only considered a limited number of providers in a number of key areas. For example, we only recommend a single discretionary investment manager… a group company. Each of the providers that we use is carefully researched and this research is held on file. A full list of providers that we currently recommend is available on request."*

Ms K was assessed as having a risk attitude of 6/10 and 'medium risk'. Shipman said: *"'Medium' risk investors seek to balance potential risk with potential for growth of both income and or capital. Equities will form a principal part of the portfolio, with some overseas equities included. I would expect equity exposure to range between 60-80% for a 'Medium' risk portfolio."* The report also said Ms K's capacity for loss was 30%.

It also said *"I consider a 'medium' risk (DT rating of 6) to be the maximum level of risk (for your investment portfolios) you are willing to take in order to achieve your stated objectives. We look to determine the lowest level of risk required to meet your objectives."*

Shipman advised Ms K to make a further lump sum contribution in 2021. Shipman's note of an online meeting of February 2021 says the investment was to help with children's future education costs. It says the previously agreed risk profile was to be used and Ms K had filled in a new risk questionnaire and had been reassessed again as 6/10 meaning 'medium' risk. Ms K points out the file note refers to March and April 2021 valuations, so was written after the event. Still, it is Shipman's record of the meeting.

A February 2021 risk profile report included answers Ms K had given to a questionnaire. Ms K says the risk questionnaire wrongly says she wouldn't need the invested funds for more than 10 years, but her children would start to reach university age in seven years.

On the questionnaire Ms K said she hadn't taken action when her investments had fallen in the past - because she hadn't known what to do. She rated her investment confidence as 'somewhat confident'. In the risk questions to which she gave a positive or negative, rather than neutral, answer, Ms K agreed she would take financial risk to achieve financial success but agreed she preferred certainty about the future value of her investments even if it meant making less money. She agreed rises and falls in the value of her investments wouldn't worry her, but she wouldn't regret not taking a risky investment if it then performed well.

The report said the questionnaire result was risk profile 6 out of 10, which it called *"High medium"*. It set out more about this as follows: *"A 'high medium' risk profile shows that your willingness and ability to accept investment risk is slightly above average. A portfolio that matches this risk profile is likely to experience some significant rises and falls in value. So while there is good potential for returns from your investment to match or go above the rate of inflation (in other words, the rate at which the prices of goods and services rise), you also need to accept that your investment is likely to fall in value from time to time, particularly in the short term."*

It also said: *"A portfolio for this risk profile is most likely to contain mainly medium- and high risk investments, including Sterling corporate bonds and global bonds including higher income types as well as Property and shares. The shares are expected to be held mainly in the UK and other developed markets, but there is also likely to be some in higher-risk emerging markets. As a result, you should always check that you are comfortable with what's included."*

It also made the following general comment about risk: *"…Shares in companies in the UK and other developed markets are considered high risk, while shares from companies in emerging markets are considered very high risk…."*

The appendix included a pie chart of a 'target portfolio, which broke down as follows:

- 4% Cash; 10% UK corporate bonds; 4% Overseas bonds (not high yield); 5% Property;
- 23% UK equity; 35% US, Europe or Japan equity; 19% Asia pacific and emerging market equity

It also said: *"It is assumed that this… will be constructed using pooled investment funds… the risk of loss is much less than for an investment made directly in the stock market – for example into individual company shares."*

The advice to make the further contribution was summarised formally in a 5 March 2021 letter. The letter said *"we completed a new risk questionnaire, which indicated a 6 out of 10… risk rating… Following the completion of this we discussed risk in detail and agreed that the existing level of risk inherent within your …portfolio ('medium' (5/6)) is suitable for your needs and objectives."*

It then set out its description of *"Medium (5/6) risk"* – which was largely the same as the 2016 6/10 risk description except equities were now 55% to 85% rather than 60% to 80%:

"'Medium' risk investors seek to balance potential risk with potential for growth of both income and or capital. Equities will form a principal part of the portfolio, with some overseas equities included. I would expect equity exposure to range between 55-85% for a 'Medium' risk portfolio."

The letter recommended using the existing model portfolio used by the ISA – it said this had a risk profile of *"Medium (5/6)"* (meaning 5 or 6 out of ten). It referred Ms K back to the 2016 report for more details of that recommendation and the model portfolio and ISA.

Later in May 2021 advice notes (or 'fact find') Ms K's situation was assessed by Shipman alongside her partner's. A fuller report followed dated 4 June 2021, issued on 1 July 2021. The report said Ms K's risk profile continued to be medium 6 and the model portfolio continued to be suitable. It repeated the same description of this as the earlier March letter.

The July 2021 report's appendix said its medium risk portfolio had a *"baseline medium risk portfolio"* of: 5% cash; 15% fixed interest; 70% shares; 10% alternatives.

The July 2021 report said the manager could vary this *"within the parameters of the determined mandate"*. It said *"…there could be periods when the level of risk is higher or lower than our agreed core risk level of 5, medium risk"*. It said maximum equity exposure would be: 5% cash; 85% shares; 10% alternatives.

The July 2021 report's *"Summary of review"* said *"…we are looking to reduce risk and change the way your investments are managed so you do not need to be so involved."* The report advised Ms K's partner to make ISA and pension transactions. It advised Ms K to transfer two cash ISAs and a PEP to her Shipman ISA, to make a fresh contribution to the Shipman ISA and to transfer a pension to another provider.

The July 2021 report said the report and associated review was provided for an agreed fee of £3000. On the basis that similar recommendations were made to Ms K and her partner, Ms K's share of the report cost might be seen as half. The recommendations to her covered both her ISA and a pension, so the share of this relating to her ISA might be seen as half again – making £750.

I wrote to the parties on 28 August 2024 setting out my provisional findings. I said, in brief:

- The ISA advice in 2016 was suitable but the ISA advice given in 2021 was unsuitable. This is because the risk profile of the model portfolio had increased, which wasn't made clear. Also Ms K was assessed as wanting no more and possibly less risk than before. Also the circumstances of the investment meant less rather than more risk was suitable.

- The risk of the model portfolio was suitable for Ms K's ISA in 2016. The total expense ratio quoted at the time didn't suggest that costs would stop a discretionary approach working for Ms K's small investment. The assessment of Ms K as medium risk doesn't seem inconsistent with her risk questionnaire answers or circumstances in 2016. Her risk profile answers point to a willingness to take risk on one hand but a preference for that risk to be moderated on the other.

- The risk description in 2016 indicated the investment would be mostly in shares, with up to 80% in shares. This would be a high exposure to shares – which in Shipman's own estimation was a high-risk asset class. But while exposure to shares could be high, taking all the circumstances into account the ISA recommendation made to Ms K in 2016 wasn't wrong. Ms K was able to afford to take risk with what she was investing in 2016. Making regular contributions, the investment started small and built up slowly. She and her partner had significant liabilities and responsibilities including their children. But they were in well paid jobs with income exceeding expenditure.

- The 2021 advice related to a large lump sum rather than small regular contributions. It more than doubled the investment that had been building up for five years. Also given Ms K's children's ages, the term to invest was nearer seven years than the twelve there had been in 2016 (the file note said 10-15 years, so didn't consider this properly). The above factors point to less risk being appropriate in 2021 than in 2016.

- A report in July 2021, a few months after the March 2021 advice, said Ms K's objectives included to reduce risk. This report was derived from conversations that had taken place at times including before the March 2021 advice. So, if anything, Ms K was looking to reduce risk in March 2021 rather than increase it – and this wish is consistent with the circumstances of the lump sum investment she was making.

- The risk assessment completed for Ms K before the lump sum investment assessed her as 6 and referred to this as 'medium high'. But the March 2021 letter that recommended the contribution didn't refer to 'high'. It was the letter that set out what was agreed and told Ms K of the degree of risk Shipman was recommending to her. This letter suggested that what was being recommended was a continuation of the 2016 approach.

- But in 2021 the risk profile of the model portfolio fund had increased – with the maximum exposure to shares going up. Also the range and scope of the asset allocation discretion had broadened (with equities ranging from 55% to 85%), which added marginally to the portfolio risk as did a marginal increase to the portfolio costs, increasing the risk of loss.

- The increase in risk is evident in investments bought with Ms K's 2021 lump sum. Less was put into fixed interest and major market equities than the February 2021 risk report showed for a 'high medium' approach – and equities included individual shares, which added risk compared to pooled investments. A sizeable 11.4% was put into specialist equity funds (although part of that could be viewed as major market equity) with more than 20% put into emerging market funds or hedge funds or commodities. Around 1% of the lump sum wasn't used in purchases, so could notionally be treated as cash.

- What was recommended to Ms K in 2021, and what was bought by her lump sum, was higher risk than was suitable given her willingness to take risk and her circumstances.

- The advice to make the lump sum contribution wasn't right, but Shipman didn't need to advise Ms K to stop making her regular contribution or to move the accumulated sums elsewhere. Shipman wasn't at fault or negligent role in managing the model portfolio, given its role. Suitable advice would've recommended a less risky lump sum investment to balance out the risks being taken with what Ms K had invested already in the model portfolio. I take this into account when suggesting a suitable benchmark to assess loss.

- Further advice was given in June or July 2021 to invest more into the portfolio. Ms K didn't follow this advice. That report showed allocations to alternative assets and shares might make up 95% of the portfolio. As this advice wasn't suitable. Ms K is entitled to a refund of what she paid for that advice – which I estimated amounted to £750.

Ms K replied to my provisional findings. She said she didn't have anything more to add.

Shipman replied saying it didn't wish to make any further points regarding the outcome but wished to request an amendment to the redress calculation date.

Shipman said, in summary:

- When Ms K transferred away from Shipman, the transfer was protracted and fragmented because she chose an in-specie rather than cash transfer. Assets moved out at different times over a period of around six months. Due to this, Ms K's ISA's asset mix during that period didn't reflect Shipman's recommended portfolio and the ISA's performance won't have been representative of how that portfolio would've performed. Also Shipman couldn't manage the ISA's asset mix during this period.

- Given the above, it would be appropriate for the redress comparison with the benchmark I'd specified, which would start at the date the lump sum was made, to stop on the day before the transfer out was initiated in December 2022, rather than running until the day the transfer out completed six months later. Shipman would pay 8% interest on any loss from that earlier point. Stopping the comparison before the transfer out started, meant it would compare the performance during the period Ms K's lump sum was invested into Shipman's recommended investments.

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've arrived at the same conclusions as in my provisional decision.

In short, for the reasons and in light of the circumstances I've summarised above, Shipman's advice to invest lump sums into Ms K's ISA in 2021 using the ISA's existing mandate was unsuitable – in essence because, given the asset mix and management style, this carried more risk than was suitable for Ms K to take with those lump sums in her circumstances.

My provisional decision set out my reasons in detail and I've summarised these again above, so I won't repeat them here. But I'll briefly address Shipman's further points on redress.

The purpose of my redress is to put Ms K, as far as is possible, back into the position she would've been in had Shipman not given her the unsuitable advice. To this end I suggested that the performance of her lump sum investment be compared to a benchmark that would represent what she might've achieved on appropriate advice. The difference would be her loss – which is the difference between what she actually received as a result of Shipman's advice and what she could've received upon appropriate advice.

It follows that it is necessary to account for the value Ms K actually got back, which in my view is appropriately measured by the value of what she was able to transfer from Shipman, rather than the value she had immediately before the transfer out started.

I accept all that Shipman says about how the performance of Ms K's ISA after the transfer started is unlikely to have reflected that of the model portfolio – it might've been better or worse – but in my view it still represented the results of Shipman's unsuitable advice. I say this as Ms K's decision to transfer her ISA away from Shipman was a foreseeable result of being left with an unsuitable portfolio by Shipman's unsuitable advice. That decision and its results flow directly from the fault I've identified. Also Ms K's choice of in-specie transfer was not unreasonable given, for example, that cashing in her assets risked loss from being out of the market entirely for a period - and I haven't found that it was wrong for Ms K to take some market risk. Also a cash transfer would mean reinvestment costs, some of which might be unnecessary if some existing holdings could be used as part of a new portfolio mix. In short, I don't think that a cash transfer was the only reasonable way for Ms K to leave Shipman.

It follows that I wouldn't agree that Ms K unreasonably failed to mitigate her losses by requesting an in-specie transfer or that the cause of losses from that point was her decision to transfer out in that way rather than the unsuitable advice that had led to the situation to which Ms K was responding. In saying this I don't overlook that Shipman pointed out to Ms K that cashing investments in would make the transfer quicker - but in light of what I've already said above, this doesn't change my view.

Shipman hasn't raised any points about my proposed the refund of that part of the 2021 advice report fee that I deemed related to advice to make lump sum contributions to the ISA. So my view on that matter is also unchanged.

So, for the reasons I've given, my decision is that the March 2021 advice to make the lump sum ISA contribution wasn't appropriate and neither was the advice in the report of June or July 2021 to contribute more. So, on that basis, I uphold this complaint.

Putting things right

Fair compensation

In assessing fair compensation, I consider my aim should be to put Ms K as close to the position she would probably now be in if she hadn't received unsuitable advice.

I think Ms K would have invested differently. It is not possible to say *precisely* what she would have done, but I am satisfied that what I have set out below is fair and reasonable given Ms K's circumstances and objectives when she invested.

What must Shipman do?

To compensate Ms K fairly, Shipman Financial Planning Ltd must:

- Compare the performance of Ms K's lump sum investment with that of the benchmark below and pay the difference between the *fair value* and *actual value* of the investment. If the *actual value* is greater than the *fair value*, no compensation is payable.

- Shipman should also add any interest set out below to the compensation payable.

- Pay Ms K £200 for inconvenience caused by the failings I've identified above.

- Repay advisor's fees of £750 with simple interest at 8% a year - from the date the fees for the advice report were paid, until the date of settlement.

Income tax may be payable on any interest awarded.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Ms K's ISA lump sum	Transferred away	FTSE UK Private Investors Balanced Total Return Index	Date of investment	Date the ISA transfer out was completed	8% simple per year on any loss from the end date to the date of settlement

- The inconvenience payment and the refund of the report fees should be paid regardless of any loss or gain calculated for the lump sum ISA investment.

Actual value

This means the amount paid from Ms K's ISA at the end date that is attributable to the lump sum she added in 2021. This should be worked out pro-rata from the value of the ISA when she paid the lump sum (and then adjusted for any contributions made later).

In other words, rather than identifying particular assets as having been bought by the lump sum, it should be treated as having bought a proportionate amount of all the ISA assets at the point it was paid (with this proportion adjusted if other contributions were made later).

Fair value

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

Any withdrawal from the Ms K's ISA (such as the transfers out) should be attributed to Ms K's lump sum pro-rata and deducted on that basis from the fair value calculation at the point it was actually withdrawn so it ceases to accrue any return in the calculation from that point on. If there are a large number of withdrawals, to keep calculations simpler I'll accept if Shipman totals all those payments and deducts them at the end to determine the fair value instead of deducting periodically.

Why is this remedy suitable?

I have chosen this method of compensation because:

- Ms K wanted capital growth and was willing to accept a moderate investment risk.
- The FTSE UK Private Investors Balanced Total Return index is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds but also some alternatives. The asset mix of the index is such that it is a fair measure for someone prepared to take risk of the kind Ms K could have suitably taken with her lump sum contribution, given her circumstances and risk attitude.

My final decision

For the reasons I've given, and in light of all I've said above, I uphold the complaint.

My decision is that Shipman Financial Planning Ltd must calculate and pay Ms K the amounts as set out above – and give her details of its calculation in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K to accept or reject my decision before 21 October 2024.

Richard Sheridan
Ombudsman