DRN-5397139

Financial Ombudsman Service

The complaint

Mr C complains about the suitability of advice he was given to invest into an Individual Savings Account (ISA) by The Heritage Financial Planning Partnership (Heritage).

What happened

The details of what happened are well known to both parties and were covered well by the Investigator in their view, so I will just summarise them here:

- In early 2018, Mr C (as an existing client of Heritage), discussed the possibility with them of switching from his cash ISAs and savings that he held at the time. Heritage say this is because he was looking for a better return.

- In May 2018, Mr C transferred approximately £80,000 into a growth fund, within his ISA wrapper.

- Mr C subsequently topped that amount up twice, in April and July 2019.

- Mr C also invested separately from his savings accounts into a General Investment Account (GIA) in December 2018 and topped that up in February 2020.

- In March 2020, Mr C says he made Heritage aware he was unhappy with the drop in value he had experienced.

- In September 2020, further advice was given to switch his ISA investments to a new provider. Mr C then topped this up further in December 2020 and August 2021.

- Mr C says he remained unhappy with the performance of his investment and changed advisor from Heritage in September 2022.

Mr C brought a complaint to our Service at the end of 2023. He said the initial and ongoing ISA advice hadn't been suitable for him. He also complained separately about the advice to invest in the GIA.

Heritage responded to say the advice they had given was appropriate for Mr C at the time. The funds were suitable for his needs and circumstances and the advice matched his investment requirements.

Our Investigator looked into it. He said that whilst it was understandable Mr C was unhappy with the performance of his investments, he thought the advice he had been given by Heritage was suitable.

Mr C remained unhappy. He responded in full and amongst his points in reply, he said there was a lack of record keeping and notes, his involvement in the process doesn't negate Heritage's requirement to give suitable advice and the advice exposed him to too much risk.

As no agreement was reached, the case was passed to me to decide and I issued my provisional findings on 28 February 2025. An extract of which, forms part of my decision below:

> I've set out the key issues I think are important here. And I've answered them below in turn.
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> Initial 2018 ISA advice and subsequent top-ups into that account
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> At the time of the 2018 advice Mr C was married (his wife has complained separately about the advice she was given) and retired. He was in receipt of state pension income as well as from an annuity. He owned his own home as well and had a mortgage on two separate properties, which he received rental income from. Along with his wife, they had a net joint disposable monthly income of approximately £1,000. They also had joint savings (including the cash ISAs) of approximately £1,000,000.
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> Mr C was recorded within the suitability report at the time, as wanting to switch from the cash ISAs he held at the time, for the potential of greater growth. He was said to be unhappy with the low levels of interest he was receiving.
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> Mr C completed a risk profile questionnaire prior to the advice, in February 2018. Based on the Mr C's answers, he was given an attitude to risk rating of 7 out of 10, but a capacity for risk rating of 4 out of 10. Mr C was advised in May 2018, on the basis of the lower risk rating. Which was described as "lowest medium".
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> The advice he was given saw him switch approximately £80,000 from his cash ISAs into a growth fund within the ISA wrapper. This was a 'with-profits' fund that was said to invest into "UK and overseas equities, property, fixed interest securities, index linked securities and other specialist investments". Its own fund factsheet at the time gave it a risk rating of 4 out of 10.
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> Mr C completed another risk profile questionnaire in October 2018. I believe this was prior to him making the GIA investment (being considered separately). Based on the answers he gave here, his attitude to risk rating remained 7 out of 10 and his capacity for risk rating increased to 6 out of 10. Mr C made two further ISA top-ups of £20,000 each, into the same fund, in 2019. Which went into the following two ISA years.
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> I am satisfied the advice Mr C was given here was suitable. He was clearly looking for a better return than the cash ISAs were providing him. This with-profits fund matched his circumstances, needs and attitude to risk. He was also left with sufficient savings elsewhere and had enough capacity to recover any losses.
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> 2020 ISA advice and subsequent top-ups into that account
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> Mr C has expressed particular concern through his new advisor, at the advice he was given to switch from the with-profits funds in 2020. Specifically, that the funds invested into at this time carried too much risk. Having considered the circumstances at the time, I agree.

In September 2020, Mr C was advised to switch his stocks and shares ISA investments from the with-profits fund, into two new funds on a new platform. This was said to have been led by Mr C's unhappiness with the performance and recovery of the with-profits funds, despite the explanation of the smoothing process to him. The funds switched into were on the same platform that Mr C had invested into through his GIA at the end of 2019.

Following this advice (and two further subsequent top-ups into the funds), the risk exposure of Mr C's investments had increased significantly and the amount he had in cash ISA or deposit accounts had reduced significantly. This advice meant he had gone from joint cash savings of approximately £1,000,000, to approximately £120,000 invested in higher risk equity-based funds. With £165,000 into funds with a similar risk exposure within the GIA and joint cash savings had reduced to less than £500,000. Mr C was now almost 70 years old.

The funds Mr C invested into were classified as 7 out of 10, contrary to the 4 out of 10 with-profits fund risk rating. Whilst I haven't been provided with a risk profile questionnaire from this time, the suitability report states that Mr C has an attitude to risk of 7 out of 10 (in line with the new recommended funds). This is significantly higher than the 4 out of 10 two years prior for the initial advice. I am not satisfied this rating was correct or fair. I haven't been provided with any questionnaire to show how this rating was arrived at and the last questionnaire we do have is from over two years prior.

In summary, whilst I am satisfied the original 2018 advice was suitable and matched Mr C's circumstances and needs, I don't think the subsequent switch and top-ups from 2020 onwards, should have been recommended. They exposed Mr C to more risk than he was willing to take.

Mr C responded to my provisional decision to say he accepted the findings. However, he did provide comments querying the method of redress. In particular, whether it took account for the distress and inconvenience caused and whether it correctly compensated him.

Heritage responded in full. Amongst their points in reply, they said:

- They provided risk profile reports from the end of 2019 and defended the increase in risk ratings through their knowledge of Mr C and ongoing communications at the time.
- They disputed that Mr C was unhappy with the performance of investments and said concerns were on raised after uncontrollable national or worldwide events and factors which impacted performance.
- They said Mr C had crystalised any losses by transferring or surrendering investments which were designed to be invested over the longer term. And stated they were no longer aware what assets were held.

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 see no reason to depart from the findings I reached in my provisional decision. Let me explain why.

The initial ISA advice complained about (which I am not upholding) was following Mr C completing a risk profile report in February 2018, and being recorded as having a "*lowest medium*" risk profile of 4 out of 10. Heritage have also provided a risk profile report from just over 6 months later, where Mr C was recorded as having a "*high medium*" risk profile. Heritage have supported this further in response to my provisional decision, with a risk profile report from November 2019 for Mr C, again recording him as having a "*high medium*" risk profile.

The advice which I don't believe was suitable was given in September 2020 and Heritage have given me no new risk profile report for that time. But Mr C is now recorded as having a "highest medium" risk profile of 7 out of 10. The funds he was recommended to switch into were in line with someone having such a risk profile. However, as well Heritage not evidencing why this increase was right and fair (a third increase to Mr C's risk profile in less than 3 years and without any change to his circumstances), I don't agree with it.

The risk exposure of Mr C's savings and investments had now increased significantly. This was after Mr C had shown nervousness and concern with market performance (email from Mr C dated September 2020) and was still recorded in the most recent risk profile report I have been given, as not being someone who takes financial risks.

I appreciate that Heritage have pointed to the emails from Mr C as evidence that he was requesting these switches. However, they were acting as his adviser and being paid as such. They had a responsibility to ensure they were giving suitable advice and Mr C should have been advised that the 2020 ISA switches and subsequent top-ups carried too much risk for him.

In regard to Mr C's comments, I am satisfied this is the fairest redress methodology, in line with what this service awards, to put customers as close to back in the position they would be in. had they received suitable advice. In this case, he would have been advised to invest into less risky funds. However, he still would have been advised (and was looking for advice) so he should pay for that, and I won't be asking Heritage to refund the advice fees.

In summary, whilst I am satisfied the initial 2018 advice was suitable for Mr C, I don't believe the 2020 advice (and therefore subsequent top-ups) were. It exposed Mr C to more risk than he was able to take, and it was based on a risk rating which I don't think was correct and can't be supported by any risk profile report from the time.

Putting things right

Fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mr C as close to the position he would probably now be in if he had not been given unsuitable advice.

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

What should Heritage do?

To compensate Mr C fairly, Heritage must:

• Compare the performance of Mr C's investment with that of the benchmark shown below and pay the difference between the fair value and the actual value of the investment. If the actual value is greater than the fair value, no compensation is payable.

• Heritage should also add any interest set out below to the compensation payable.

Income tax may be payable on any interest awarded.

Investment name	Status	Benchmark	From ("start date")	To ("end date")
2020 ISA investments and subsequent top-ups	No longer exists	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	Date of investment	Date investment transferred to new advisor

Actual value

This means the actual amount paid from the investment at the end date.

Fair value

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

To arrive at the fair value when using the fixed rate bonds as the benchmark, Heritage should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any additional sum that Mr C paid into the investment should be added to the fair value calculation at the point it was actually paid in.

Any withdrawal, income or other distributions paid out of the investments should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if Heritage totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically. If any distributions or income were automatically paid out into a portfolio and left uninvested, they must be deducted at the end to determine the fair value, and not periodically.

Why is this remedy suitable?

I have chosen this method of compensation because:

• Mr C wanted Capital growth with a small risk to his capital.

• The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.

• The FTSE UK Private Investors Income Total Return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.

• I consider that Mr C's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr C into that position. It does not mean that Mr C would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker fund. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr C could have obtained from investments suited to his objective and risk attitude.

My final decision

I uphold the complaint. My final decision is that The Heritage Financial Planning Partnership should pay the amount calculated as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 14 April 2025.

Yoni Smith
Ombudsman