

## **The complaint**

Mr C complains about the suitability of advice he was given by The Heritage Financial Planning Partnership (Heritage) to switch funds within his personal pension.

## **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 contacted Heritage in early 2021 asking whether it was worth considering increasing the risk of his personal pension and switching funds. Heritage say this was agreed on the phone and a switch was completed (February 2021) into the same funds Mr C was invested within his GIA.
- 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 and GIA advice hadn't been suitable for him and complained about them separately. He also complained he shouldn't have been advised to increase the risk and switch his personal pension investment.

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. I issued my provisional findings on 28 February 2025. An extract from which, forms part of my decision below:

At the time of the 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.

Mr C was recorded in 2018 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. He subsequently switched and topped-up his ISA account of approximately £120,000 into higher risk equity-based funds. He also invested approximately £160,000 from his savings into a General Investment Account (GIA) and into funds of the same risk profile. All following advice from Heritage.

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. Which was described as "lowest medium". 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. This advice in February 2021 was done on the phone. I haven't been provided with any record of the conversation, any illustration for the switch, any recommendation letter or any risk profile questionnaire.

The advisor at the time has said, "we had a telephone conversation, he was generally pleased with his .. investments and it agreed to increase his risk profile and mirror the funds... I actioned a fund switch online".

The advice and switch saw Mr C move approximately £160,000 in his personal pension, from a cautious portfolio, with a low-risk rating, into three new high risk and equity-based funds. This was following the advice for Mr and Mrs C to move approximately £600,000 of cash ISA, savings and deposit account funds into higher risk stocks and shares ISA and mutual funds.

I am not satisfied the advice Mr C was given here was suitable. There's no further copy of the call or evidence of the discussion. Whilst I appreciate Mr C seems to have led this switch through emails, this was a significant increase in risk for Mr C and his pension holdings and the advisor himself has said that it was only suitable by his risk rating being increased from a 6 out of 10 to a 7. However, there is no

evidence provided to me of how this was arrived at. And considering this will have been the third risk rating increase for Mr C within less than 3 years, whilst he was retired and with no change in circumstances, I don't find that to have been a true reflection or that this advice was suitable. Further, Mr C was on record in the months prior to this switch to have shown genuine concern at the investment's performance and their volatility.

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 crystallised 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.
- They also said that Mr C had never shown genuine concern at the investment performance and the volatility. They said he had instead in January 2021 commented how pleased he was with the funds.

### **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.

Mr C made this pension switch based on advice from Heritage but I have no copy of any discussion. Whilst I now have a late 2019 risk profile report, it is over a year prior to this pension switch and still doesn't record Mr C as having a risk profile in line with this pension switch. I believe the switch exposed Mr C's pension to more risk than he was willing or able to take.

I appreciate Mr C seems to have led the suggestion of the switch, through emails we do have. But it was up to Heritage to take the necessary steps to ensure it was suitable for him. The switch wasn't done on an execution only basis. And they haven't shown me they did that.

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, my decision remains as I set out provisionally, that the advice Mr C was given to switch his pension investment was unsuitable. He went from a cautious profile, to three higher risk, equity based funds. I have no copy of the discussion or recommendation and the risk profile I have is from over a year prior.

## Putting things right

### What must Heritage do?

To compensate Mr C fairly, Heritage must:

- Compare the performance of Mr C's investment with that of the benchmark shown below. If the actual value is greater than the fair value, no compensation is payable. If the fair value is greater than the actual value there is a loss and compensation is payable.
- Heritage should also add any interest set out below to the compensation payable.
- If there is a loss, Heritage should pay into Mr C'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 Heritage is unable to pay the compensation into Mr C's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided 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 Mr C won't be able to reclaim any of the reduction after compensation is paid.
- The notional allowance should be calculated using Mr C's actual or expected marginal rate of tax at his selected retirement age.
- It's reasonable to assume that Mr C is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr C 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%.
- If either Heritage or Mr C dispute that this is a reasonable assumption, they must let us know as soon as possible so that the assumption can be clarified and Mr C receives appropriate compensation. It won't be possible for us to amend this assumption once any final decision has been issued on the complaint.

Income tax may be payable on any interest paid. If Heritage deducts income tax from the interest, it should tell Mr C how much has been taken off. Heritage should give Mr C a tax deduction certificate in respect of interest if Mr C asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Investment name	Status	Benchmark	From ("start date")	To ("end date")
Personal Pension	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 investment 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.

## **Why is this remedy suitable?**

I've 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 made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's 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 investment. 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**