

## **The complaint**

Mrs S complains that she was given unsuitable investment advice by Skerritt Consultant Limited, referred to as “Skerritt” or “the business”.

In summary, she says:

- Skerritt was wrong to advise her to move her ISA from its existing home to a new provider.
- It was done so on the false premise that she’d make money, but she was exposed to more risk than she agreed to.

To put thing right, she’d like compensation for the gains she would’ve otherwise made by staying with his previous provider.

## **What happened**

In 2017, Mrs S was advised to transfer her ISA over to a new provider. I understand that this was done so, in the hope that she’d make better returns.

At the time she was in his early 50’s, married and in full time employment. She owned her own home too, without an outstanding mortgage. She also held £37,000 in joint savings, £5,500 in a cash ISA and £20,183, in a Stocks and Shares ISA managed by the previous provider.

Mrs S’s attitude to risk was assessed as eight out of ten, and she was viewed as a medium to high-risk investor.

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

- Our service is unable to consider a complaint about ‘complaints handling’ because it’s not a regulated activity, even though Skerritt is. Therefore, it’s not something our service can look at.
- Poor performance alone isn’t a basis upon which to uphold a complaint. Despite what Mrs S says our service wouldn’t ask for a comparison of her old and new ISA providers as a basis to uphold (or reject) the complaint.
- Performance of the overall portfolio is dependent on external factors – including the management discretion of fund managers – so it’s not something that our service would consider or blame Skerritt for.
- As the account was operated on a discretionary basis, it’s not for us to investigate each (subjective) decision taken by the fund manager regarding the portfolio, and certainly not do so with the benefit of hindsight.
- It’s impossible to know for sure how things were likely to turn out. Recommendations don’t always work, and unless a guarantee is given there’s not always a recourse if the recommendation doesn’t succeed.

- The judgement of one manager can't be (fairly) compared to another, that wouldn't be a fair comparison given the subjective decisions each will make.
- In this instance, Mrs S was advised to move her ISA so that it could also be managed on a discretionary basis. This meant there was no new injection of cash into the ISA, instead it involved transferring funds already invested elsewhere.
- The charges for the advice/investment were made clear. It was also made reasonably clear to Mrs S that the value of her investment could fluctuate. So, whilst the aim of the advice was to achieve potential growth (in the long term) this wasn't guaranteed.
- Annual reviews took place on a regular basis and her ATR was re-assessed at regular intervals. She was also kept in touch by the business using the contact details that she (and her husband) had provided.
- Overall, and on balance, the advice was suitable in the circumstances.
- In 2021, she topped up her ISA although a suitability report wasn't produced her circumstances hadn't materially changed.
- Based on the fact find dated August 2022, it seems Mrs D continued to maintain joint savings of £35,000 and her joint monthly disposable income was around £2,000, indicating that she also had capacity for loss.

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

- She understood that the investment was a risk-based investment and that no guarantees were given. However, Skerritt's claims about how the investment would grow were based on false information.
- She paid Skerritt (and the new provider) fees to make any changes necessary to make his investment grow, but they were both happy to let it flatline. They knew the benchmarks but didn't do what they were told.
- She was happy to pay more in charges for Skerritt to do what it was supposed to – change to better funds – but it didn't.

The investigator having considered the additional points wasn't persuaded to change her mind.

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 Mrs S says, I'm unable to safely say that Skerritt behaved unreasonably.

Before I explain further why this is the case, I think it's important for me to note I very much recognise Mrs S's strength of feeling about this matter. She has provided detailed 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 under a separate subject heading, it's not what I'm required to do in order to reach a decision in this case. My role is to consider the evidence presented by Mrs S and Skerritt, 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, but unlike a court or tribunal 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 brief, for the following reasons:

- I agree with the investigator that service complaints aren't regulated, therefore this isn't something that our service would generally consider.
- I also agree that complaints about 'investment performance' alone are not something that we'd consider, and therefore this isn't something that I can look into (in isolation) in this instance.
- Investment performance is dependent on the financial markets, and not something that a business can predict or control, therefore it's not something that I can blame Skerritt for.
- An investment not making a positive return, doesn't of itself mean that the advice was unsuitable. I appreciate Mrs S was advised to transfer her ISA, in the hope that she'd make a better return however no guarantees were given. In the circumstances and on balance, I can't say that she was told or led to believe that she'd make a particular/specific return on her investment.
- On the face of the evidence, and on balance, I've seen nothing to suggest that the advice wasn't given in good faith.
- I appreciate that she'd hoped for better returns, but the fact that she didn't get that – compared to her previous ISA – doesn't mean the advice was wrong, because there were no guarantees.
- I note Mrs S says that she was advised to take more risk than she was willing to take, but on balance I don't agree – based on what Skerritt says, it seems the fund was lower risk than her ATR. In any case, and on balance, I'm also satisfied that she was content with a higher ATR and was potentially prepared to take a greater risk.
- It's arguable that a greater level of risk was inevitable, if the investor wanted the potential for higher returns, and may explain why Mrs S agreed to the (higher) ATR at the time. Given her circumstances as set out above, I can't say that Skerritt did anything wrong. In other words, I can't say – based on her circumstances and assessment by Skerritt – that a medium to high ATR (for this portion of her money) was unsuitable.
- I note what Mrs S says about the advice, but I can't agree that this was based on false information. I note she thinks Skerritt should've forensically checked the product, but I don't think that's practicable and not what a business is expected to do in these circumstances. So, Skerritt hasn't behaved unreasonably by not doing so.
- On the face of the evidence, and on balance, I'm unable to safely say that the recommendation didn't meet her long-term objective for growth – there was nothing to suggest that it wouldn't.
- Just because five/six years or so in, it didn't provide as much return as Mrs S would've liked, doesn't mean that Skerritt has done anything wrong. I note Skerritt has pointed out numerous other advantages, including Mrs S's pension and ISA being held in the same place, which I'm aware can be very convenient.
- I'm mindful that following a financial review in 2020, Mrs S was found to be a six out of ten in terms of his ATR, which had reduced by two positions. But this doesn't of itself mean that the 2017 ATR assessment was wrong, because it was roughly three years since her investment and her circumstances may have changed a little.

- In any case, based on what Skerritt says, I note Mrs S was advised to invest in the VT Esprit Tactical Growth Fund – designed for long term growth – which was lower risk than his ATR. Given that she was broadly close to retirement, I can't say that the advice to invest in this fund was unreasonable.
- I note that Mrs S's finances were subsequently reviewed again in spring 2021, her ATR had remained six out of ten – I note according to Skerritt it wasn't necessary to deviate from the original advice. The 2017 advice was given with a longer-term horizon in mind and may explain why she wasn't advised to make any changes, and why she invested additional sums.

I appreciate that Mrs S will be thoroughly unhappy that I've reached the same conclusion as the investigator. Furthermore, I realise my decision isn't what she wants to hear. Whilst I appreciate her frustration, I can't safely say that Skerritt provided unsuitable advice.

In other words, on the face of the available evidence, and on balance, I can't 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 Mrs S to accept or reject my decision before 1 November 2023.

Dara Islam  
**Ombudsman**