

The complaint

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

In summary, he says:

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

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

What happened

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

At the time he was in his late 50’s, married and in full time employment. He owned his own home too, without an outstanding mortgage. He also held £37,000 in joint savings, £5,500 in a cash ISA and £32,000 in a Stocks and Shares ISA managed by the previous provider.

Mr S’s attitude to risk was assessed as eight out of ten, and he 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 the business 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 Mr S says our service wouldn’t ask for a comparison of his 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, Mr S was advised to move his 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 Mr S that the value of his 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 his ATR was re-assessed at regular intervals.
- Overall, and on balance, the advice was suitable in the circumstances.

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

- He 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.
- He paid the 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.
- He 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 Mr 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 Mr S's strength of feeling about this matter. He has provided detailed submissions to support the complaint, which I've read and considered carefully. However, I hope he 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 Mr 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 Mr S was advised to transfer his ISA, in the hope that he'd make a better return however no guarantees were given. In the circumstances and on balance, I can't say that he was told or led to believe that he'd make a particular/specific return on his 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 he'd hoped for better returns, but the fact that he didn't get that – compared to his previous ISA – doesn't mean the advice was wrong, because there were no guarantees.
- I note Mr S says that he was advised to take more risk than he was willing to take, but on balance I don't agree – based on what Skerritt says, I note the fund was lower risk than his ATR. On balance, I'm also satisfied that he 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 Mr S agreed to the (higher) ATR at the time. Given his circumstances as set out above, I can't say that Skerritt did anything wrong. In other words, I can't say – based on his circumstances and assessment by Skerritt – that a medium to high ATR (for this portion of his money) was unsuitable.
- I note what Mr S says about the advice, but I can't agree that this was based on false information. I note he thinks that 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 his 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 Mr S would've liked, doesn't mean that Skerritt has done anything wrong. I note Skerritt has pointed out numerous other advantages, including Mr 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, Mr 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 his investment and his circumstances may have changed a little.
- In any case, based on what Skerritt says, I note Mr 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 he was close to retirement, I can't say that the advice to invest in this fund was unreasonable. Even if it hadn't, and had been a medium to high-risk fund, it's arguable that it wasn't unreasonable given his circumstances.
- I note that Mr S's finances were subsequently reviewed again in spring 2021, his ATR had remained six out of ten – I note according to Skerritt, but 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 he wasn't advised to make any changes.

I appreciate that Mr S will be thoroughly unhappy that I've reached the same conclusion as the investigator. Furthermore, I realise my decision isn't what he wants to hear. Whilst I appreciate his 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 him what he 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 Mr S to accept or reject my decision before 1 November 2023.

Dara Islam
Ombudsman