

## **The complaint**

Mr P complains that Investec Wealth & Investment Limited failed to manage his investment portfolio in line with the discretionary mandate he agreed to.

## **What happened**

In 2017, Mr P held an account with Investec and agreed for his portfolio to be managed on a discretionary basis. His portfolio was created after receiving his share of trust proceeds. It was assessed that Mr P's portfolio was to be managed in line with the balanced risk mandate.

Amongst other assets in Mr P's portfolio there were two holdings – one in "IPF" and one in "PFG" which are the main subject of complaint. It's recorded that these holdings were to be held to await long term recovery as the value had decreased whilst in the trust holding. In 2018, Mr P had expressed concern over the value of these two holdings, at one point asking for them to be sold up to his CGT allowance. However, the portfolio continued to contain the holdings.

Mr P complained that the holdings made the portfolio imbalanced and fell outside of the agreed mandate. He felt Investec should've done more to put this right and mitigate the losses he experienced whilst holding them.

Our Investigator felt the complaint should be upheld. She explained that the mandate for Mr P's discretionary portfolio specifically said there would be no more than 10% of the portfolio in any single stock, but that both these holdings were above that threshold. She said this made the portfolio unsuitable and suggested redress in line with our long established approach – to compare Mr P's portfolio with a benchmark and pay any loss. Mr P agreed. Investec disagreed and made the following points:

- The PFG and IPF holdings weren't included in the portfolio as Mr P decided he wanted to keep those holdings for any potential recovery
- The valuations made clear that these holdings were outside of the main discretionary mandate as they were marked with the letter "H" to show the holdings were restricted
- Mr P was told he could reduce the holdings if he wanted to
- The opportunity was given to Mr P to change his strategy of excluding the holdings from the discretionary management of the portfolio but he didn't take up this offer
- As the holdings were excluded from the wider management of the account they are outside of the mandate

Our Investigator responded to say that it appears Mr P agreed to continue with the PFG and IPF holdings at the suggestion of Investec. She said there's no evidence to show the holdings were classed as being "execution only" and it's clear they were under the direct management of Investec. She reasserted that the complaint should be upheld.

Investec responded to say that the IPF and PFG holdings were ringfenced rather than execution only. It said they formed part of the advice but not the mandate and Mr P had agreed to this. Investec explained that as the holdings were ringfenced and didn't form part

of the portfolio mandate, the level of the holdings didn't make it unsuitable for Mr P. It said it was Mr P that decided on this strategy and course of action.

As no agreement has been reached, the complaint has been passed to me to reach a decision.

### **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'm upholding this complaint for similar reasons to our Investigator. Investec hasn't managed Mr P's portfolio in line with his attitude to risk and agreed mandate – making it unsuitable. I'll explain why.

In 2017 Mr P agreed to a discretionary agreement with Investec. It's recorded that the agreed mandate was the medium/balanced risk mandate. The Mandate fact sheet says:

*“Consideration: No individual stock should account for more than 10% of the equity content of the portfolio.”*

At the time of the agreement, the holding for IPF made up 11% and the holding for PFG made up over 15% of Mr P's overall portfolio. So, Mr P had significantly more than the 10% threshold. There's no indication on any of the documentation from around this time that the IPF and PFG holdings fell outside of the discretionary agreement. And, it appears from Investec's latest submission that the holdings formed part of the agreement but fell outside of the mandate. So, I've considered what this meant for Mr P, and whether it made his portfolio unsuitable for him and if so, that he was made aware of this.

The holdings are mentioned in Mr P's 2017 periodic review. In this it says:

*“...a large percentage position in [PFG and IPF] was transferred and post discussions with client, happy to hold looking for a recovery in the respective share prices prior to disposal. Client understands the associated risks.”*

It appears the holdings were discussed but as they made up part of the portfolio, and the discretionary service, I'd have expected there to be reasons why they should be held and pointers to the fact the holdings were higher than the agreed mandate and the risks associated with that. But I can't see this was pointed out.

In 2018, Mr P raised concerns over the continual losses these specific holdings were experiencing and asked to dispose of some. But it appears from the phone call I've listened to that Investec advised him to continue with the strategy of holding on to them and waiting to recover. I acknowledge that it was Mr P that decided to do nothing, but this was based on information from Investec and crucially, Mr P had an agreement and paid for the service in relation to this. Effectively, I believe Mr P kept these holdings as he felt Investec was advising him to do so. In a later call in November 2018 the Investec investment manager said *“Are you happy to take our advice and continue to hold for now?”* This was in response to Mr P's concerns over both the weighting of the PFG and IPF holdings and the performance. So it's clear to me that Investec managed these holdings and decided this was the best course of action for Mr P's circumstances.

Investec says it gave Mr P the opportunity to include the holdings as part of his mandate – and it explained at this point its Investment Manager would've ensured action was taken to bring the portfolio in line with the mandate. Investec quoted the following in support of this:

*“...we would not look generally to hold circa 30% of the portfolio in [PFG and IPF] however we decided to run with the exposure as a result of the large share price falls seen, particularly in PFG just prior to the transfer to you. If you are unhappy holding the positions and continuing to run the risk whilst we wait for recovery in value please do confirm. I am happy however running the above strategy for you.”*

Whilst this does enable Mr P to make some decisions, it effectively confirms that this strategy is what Investec is advising him to do. And whilst it refers to the size of the holdings in the portfolio, it doesn't specifically point out that this would make the portfolio fall outside of the agreed mandate or that it was posing too much risk for Mr P. The correspondence later refers to a “ring fence” but I don't think Investec made it clear that this could mean this level of holding isn't suitable for Mr P.

Mr P was paying Investec for its discretionary management of his portfolio. The only option it gave Mr P was to run the strategy of holding on to the PFG and IPF shares or manage them himself. So, Mr P could reasonably expect that the strategy and portfolio management would be in line with his agreed risk profile and mandate. But I can't see that it was. Investec managed Mr P's whole portfolio, so even if the mandated concentration percentage for single holdings was slightly out of line, the whole portfolio had to be balanced to meet Mr P's risk profile. But over a quarter of his portfolio was concentrated in two very similar holdings which appear to present a high level of risk.

Whether these funds were “ringfenced” or not, Investec had a duty to manage Mr P's whole portfolio in line with his risk profile and having such a large concentration in one area skewed his portfolio to the extent that it wasn't suitable for him. This is demonstrated in the investment proposal whereby the suggested allocation of UK Equities is 28% but the inclusion of these holdings brought that level to 52%. The evidence shows me that it was Investec advising Mr P to keep these holdings in place with the knowledge they presented a high level of risk.

I appreciate that the role of a discretionary investment manager is a balancing act, but Mr P was paying for a service where he could expect his portfolio to be managed in line with his agreed objectives and risk profile. I can't see that Investec did this. Investec has asked me to decide at which point the strategy relating to the PFG and IPF holdings should've changed – as it has explained Mr P didn't decide to change strategy or take over the management of these holdings himself. But I've already explained the portion of those holdings didn't meet the mandate, and skewed the overall portfolio to the extent that it was unsuitable for Mr P. And this was the case from the start of his agreement with Investec – in 2017. So, in my view Investec's initial advice and management of Mr P's portfolio as a whole was unsuitable for Mr P's agreed circumstances and risk profile. So, it needs to put this right.

## **Putting things right**

### **Fair compensation**

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

I take the view that Mr P would have invested differently. It is not possible to say *precisely* what he would have done differently. But I am satisfied that what I have set out below is fair and reasonable given Mr P's circumstances and objectives when he invested.

### **What must Investec do?**

To compensate Mr P fairly, Investec must:

- Compare the performance of Mr P's investment with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investments. If the *actual value* is greater than the *fair value*, no compensation is payable.
- Investec should also add any interest set out below to the compensation payable.

Income tax may be payable on any interest awarded.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Discretionary Portfolio	No longer in force	FTSE UK Private Investors Income Total Return Index	Date of investment	Date ceased to be held	8% simple per year on any loss from the end date to the date of settlement

### ***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.

Any additional sum paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in.

Any withdrawal from the Investec 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 Investec totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

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

I have decided on this method of compensation because:

- Mr P wanted Capital growth and was willing to accept some investment risk.
- 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.
- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr P's circumstances and risk attitude.

**My final decision**

I uphold the complaint. My decision is that Investec Wealth & Investment Limited should pay the amount calculated as set out above.

Investec Wealth & Investment Limited should provide details of its calculation to Mr P in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 2 February 2023.

Charlotte Wilson  
**Ombudsman**