

The complaint

Mr and Mrs Y complain that Union Bancaire Privee, UBP SA ("UBP") failed to advise or warn them against proceeding with investment in an entity that I'll refer to as X. They feel that the investment was a scam that UBP ought to have been aware of, so it should be responsible for the losses they incurred.

What happened

Mr and Mrs Y had been customers of UBP since 2015, jointly holding an advisory account and an execution-only account. They were categorised by UBP as well-informed, high net worth investors with a high-risk profile. The customer agreements in place indicated that they had an advisory relationship with UBP governed by a 'Professional Customer Agreement', which allowed UBP to offer advice and information regarding direct investments targeted at professional clients and sophisticated retail investors.

In November 2018, separate to the agreement described above, Mr and Mrs Y contacted UBP to tell it of their intention to invest in X. They informed UBP that X invested in various properties and paid high coupons. Mr Y has said that he and his son conducted their own due diligence into X, and having found no negative information, and having received no warnings from UBP, they proceeded to invest.

Mr and Mrs Y instructed UBP to pay £200,000 to X, then instructed a further payment of £200,000 in January 2019, part of which they say was invested on behalf of their son. They received two interest payments from X in early 2019, of £13,750 and £22,500 respectively. But X then went into administration, resulting in the loss of the invested amounts

In December 2022 Mr and Mrs Y complained to UBP. They felt it should've been aware X was a scam and should've advised them against proceeding with the investments. Mr and Mrs Y highlighted that UBP had previously warned them regarding a similar investment they'd expressed interest in.

UBP didn't uphold the complaint and it was referred to this service.

An investigator looked into the matter but agreed that the complaint shouldn't be upheld. He said, in brief:

- The investment in X wasn't advised by UBP under its agreement with Mr and Mrs Y. Rather, the idea of investing in X was put to UBP by Mr Y. Therefore, the investigator hadn't considered UBP's actions in relation to its regulatory obligations regarding the provision of investment advice.
- The investigator had focussed on assessing whether X was a legitimate business or a scam that UBP ought to have been aware of.
- Having considered the evidence provided and having conducted his own analysis of X, he'd found no evidence to suggest that it was a fraud or a scam. It appeared to be a legitimate but unregulated collective investment scheme which unfortunately failed largely due to the impact of the Coronavirus pandemic.
- As he'd concluded X wasn't a scam, he made no findings regarding UBP's regulatory

obligations regarding investment fraud. Rather, he'd focused on assessing UBP's involvement to determine whether it had done what would be expected in the circumstances.

- The investigator said it wasn't disputed that the investment in X was external and not advised by UBP under their Customer Agreement with Mr and Mrs Y. In addition, UBP had confirmed it had not been provided with any marketing material for X and was not asked any questions about the investment.
- The investigator acknowledged that UBP had previously conducted a basic due diligence check on a similar investment idea that Mr and Mrs Y had been interested in and on that occasion, it had expressed some concern, so Mr and Mrs Y hadn't proceeded with the investment.
- The investigator agreed it might therefore have been reasonable to expect UBP to have offered a similar warning had it had any concerns about X. But as it didn't, he couldn't reasonably conclude there was anything that would've prompted UBP to warn Mr and Mrs Y about X.
- UBP had said it was not asked to and did not give advice on the investments in X. Also, it confirmed that the payments instructed relating to X weren't unusual as Mr and Mrs Y had previously made external investments. The investment seemed consistent with Mr and Mrs Y's investment history and their knowledge and experience. The investigator was therefore persuaded that it was reasonable for UBP to conclude that the investment in X wasn't unusual, considering their investment history, knowledge and experience.
- Further, after Mr and Mrs Y conducted their own due diligence, they'd confirmed they'd found no negative information about X. This supported the view that X wasn't a scam.

Mr and Mrs Y didn't accept the investigator's view. They questioned his finding that the investment in X had been consistent with their previous investment history. And they also raised a concern that there'd been confusion about which of their sons they'd invested on behalf of, as the correct one had no investment knowledge or experience.

These points were raised with UBP. It accepted that there may have been some confusion about which son had been involved, but nevertheless felt it was likely Mr and Mrs Y would've discussed the due diligence with their other son, who was very experienced in investment.

UBP also pointed out that it had not been the case that Mr and Mrs Y had previously invested in investments similar to X. But it was nevertheless confident they were highly sophisticated and experienced investors based on information Mr Y had provided to it. It said Mr and Mrs Y had previously asked for details of unlisted and external investments and had invested in two of them.

Mr and Mrs Y remained of the view that the confusion regarding their sons was material to the outcome of the complaint and stressed that they hadn't discussed the matter with their other son, who was experienced in investing. They also reiterated their concerns that UBP had previously warned them about investments but had not done so on this occasion.

The investigator wasn't persuaded to change his opinion, so the matter was referred to me to 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 find I've come to the same conclusion as those reached by the

investigator and for broadly the same reasons. While I appreciate it will have been very disappointing and upsetting for Mr and Mrs Y to have lost so much money through the investment in question, I don't think it would be fair for UBP to bear any responsibility for this.

It doesn't seem to be disputed that this was an investment decision that Mr and Mrs Y took of their own volition. It wasn't advised or recommended by UBP in any respect. But Mr and Mrs Y feel that UBP nevertheless owed them a duty of carrying out due diligence on the investment. And had it done so, they would've become aware of potential issues with X and not invested.

Mr and Mrs Y's belief that UBP should've carried out due diligence on X seems to be based upon the fact that it had done so previously in respect of an earlier potential investment. While that may be so, I've not seen that there was any agreement that such due diligence would be carried out as a matter of course on any future investment opportunities. Mr and Mrs Y don't appear to have provided UBP with much detail about the investment, nor with copies of any promotional materials. This being so, I don't think it was reasonable for Mr and Mrs Y to assume that due diligence would be done. They don't appear to have asked for it, and they don't appear to have been told by UBP that it had been carried out, nor that UBP was satisfied there were no concerns with the investment.

And in any event, it appears to be the case that even if UBP had carried out due diligence along the lines of that carried out previously it wouldn't have found anything to give cause for concern about the investment, unlike on the previous occasion. While I'm aware of the issues that have subsequently come to light with X, it doesn't look like these would've been apparent in 2019. And this appears to be supported by the fact that Mr and Mrs Y's own due diligence at the time didn't indicate that anything was wrong.

I've noted the point about the confusion about which of Mr and Mrs Y's sons was invested on behalf of. They have one son who is known to UBP and experienced in investment, whereas the other son for whom they invested is not similarly experienced. But I don't think any confusion there's been on this point is material to the outcome of the complaint.

My final decision

For the reasons given, my final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Y and Mrs Y to accept or reject my decision before 19 April 2024.

James Harris
Ombudsman