

The complaint

Mr S is a director of a company referred to as 'Business A' throughout the decision below.

Mr S's self-invested personal pension ('SIPP') is managed on a discretionary basis by UBS AG ('UBS').

This complaint has been brought alongside others from additional directors and senior employees of Business A (Mr S S, Mr C S, Mr P S and Mr B) who also hold SIPPs managed on a discretionary basis by UBS, and whose complaint points are broadly identical.

Given each complainant has raised the same issues, received the same response from UBS, and provided the same evidence to this service, I make no apologies for the similarities in my decisions in these cases.

Mr S (and the other complainants) have stated that the advice provided by UBS to switch the investments within their pensions was unsuitable. They have stated the switch exposed the pension funds to unsuitably high levels of risk (concentration and currency risk) that were not sufficiently explained at outset.

Had full information and suitable advice been given Mr S has said the switch would not have been agreed and the underperformance of the new investments would have been avoided.

What happened

The relationship between Business A, its company pension scheme, and the SIPPs held by directors / senior employees commenced in 2002, when UBS began managing both the company pension and the SIPPs.

In 2015 all parties agreed that for simplicity the investments held within the individual SIPPs of directors / senior employees would mirror those of the company scheme.

The move from the original customised investment strategy ('CMP') to the new Sustainable Investment Strategy ('SI portfolio') was discussed with other directors of Business A (both in relation to their individual SIPPs and the wider company scheme) in September 2020.

Following these discussions UBS contacted Mr S in October 2020. As Mr S had previously looked to align his personal scheme with that of the overall company strategy UBS offered to make a recommendation regarding a move to the SI portfolio.

Mr S subsequently signed the UBS Discretionary Service Mandate. This stated UBS would manage the investments:

"Using our discretion in line with your investment strategy... this may result in your discretionary portfolio being implemented through regulated collective investment schemes, exchange traded funds, direct investments or any other relevant investment vehicles suitable to your investment".

The selected investment strategy was confirmed as the UBS Sustainable Investing Growth

Strategy with the form also confirming the GBP had been selected as the “reference currency” for the pension.

UBS documented the reasons for their recommendation of the SI portfolio stating:

“The portfolio has a growth risk profile with a time horizon of over 10 years and an objective of real growth in capital.

This is your pension provision and you have no immediate requirement to access the funds. This is a diversified portfolio of cash, bonds, and equities which is actively managed by UBS. You have a long term time horizon, being at least 10 years.

The pension plan investments tend to generally mirror the [Company A] discretionary investment strategy overall.

After reviewing certain aspects of the Company’s asset allocation in the current core growth portfolio, it was decided to gradually move the overall investment allocation to a Sustainable Investing Mandate over the next year.

As such we are making similar recommendations for each of the individual pension plans under management with us.

The sustainable investing portfolio will allow you to achieve a more global and diversified approach as opposed to your current portfolio which has a UK-centric bias. Diversification is also achieved through non-traditional holdings such as Green Bonds, as well as thematic funds.

The UBS Sustainable Investing Portfolio targets mainly capital growth over a long-term time horizon (10 years) with a growth risk profile. The portfolio is an actively managed discretionary portfolio fully integrating Environmental, Social and Governance (ESG) factors into the investment process to provide a 100% sustainable portfolio. The portfolio encompasses a dedicated UBS Chief Investment Office (CIO) Strategic Asset Allocation (SAA) providing access to exclusive investment content, including World Bank Bonds, Green Bonds and ESG Engagement Equity Funds. Their risk/return characteristics are in line with ‘traditional’ mandate solutions and target a similar performance in the long run.

You would prefer UBS to make day to day investment decisions in line with these objectives.”

Conversations took place between Business A (and the individual policy holders) and UBS in July and August 2022 regarding the pensions and investment performance, with UBS making presentations and alternative recommendations on moving some of the pension monies away from the SI portfolio.

In September 2022 a complaint was registered with UBS, with this being followed up in writing on 4 October 2022. This letter contained the complaint details for all five SIPP holders and Business A’s company scheme. Mr S emailed UBS to confirm he wished to be included in the above complaint in June 2023.

The complaint points were the same for all complainants, with the main point being that the suitability of the move to the SI portfolio was not appropriately considered, especially in relation to the increased currency risk. The complainants noted that the SI portfolio was 100% hedged back to Sterling, whilst the previous CMP model was not. The complainants stated that had this been fully explained at the time, the switch would have been rejected.

UBS issued their response to the complaint on 8 August 2023. This did not uphold the complaint.

UBS stated that they considered the advice to switch into the SI portfolio as suitable, as it matched Mr S's risk profile and objectives. With regard to the hedging issue UBS stated that had held discussions with another Business A director in June 2020 where the hedging was discussed.

In response to the performance complaint UBS accepted that the SI portfolio had not performed as desired however explained that there were no guarantees attached to the SI portfolio and that investments can rise as well as fall in value. Whilst some of Mr S's other pension investment may have outperformed the SI portfolio, UBS stated that this did not mean their recommendation was unsuitable.

Unhappy with the complaint response issued by UBS, Mr S referred his complaint to this service in October 2023.

Our investigator looked into things and concluded that UBS had not acted unreasonably. The investigator stated that the advice to move to the SI portfolio was considered suitable as it matched the agreed risk profile and Mr S's objectives.

Regarding the hedging on the SI portfolio, the investigator concluded that there was no specific hedging strategy stipulated by Mr S at the outset of the investment, and that the hedging was the investment managers decision to make. The discretionary mandate allowed UBS to manage the investment funds as they saw fit with the inclusion of the hedging being their decision, used to mitigate volatility in the portfolio. Whilst the inclusion of the hedging had potentially had a negative impact on the performance of the SI portfolio this was something which could only be known with the benefit of hindsight.

Mr S did not agree and maintained that the advice provided by UBS was unsuitable, the concentration on sustainable investments and currency hedge made the proposed investment too high risk and that he had not been provide with sufficient information about the proposed investments before agreeing to them.

As the investigator was not minded to change their outcome, the case has been passed to me for a final 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.

The first element of the complaint I have considered is the suitability of UBS's recommendation to move from the CMP strategy to the SI portfolio.

There are rules and guidance laid out by the Financial Conduct Authority which cover how businesses must act when providing financial advice to consumers. Some of these have been referenced in the complaint documentation submitted to this service. I would like to ensure all parties that all the relevant rules, guidance and principles have been fully considered in reaching this decision. This includes, but is not limited to:

- Principle 2 - A firm must conduct its business with due skill, care and diligence.
- Principle 6 - A firm must pay due regard to the interests of its customers and treat them fairly.

- Principle 7 - A firm must pay due regard to the information needs of its clients and communicate information to them in a way which is clear, fair and not misleading.
- Principle 9 - A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment.

And

COBS 9A.2.1 R which states:

“(2) only recommend investment services, financial instruments and insurance-based investment products, as applicable, or take decisions to trade, which are suitable for the client and, in particular, in accordance with the client’s risk tolerance and ability to bear losses.”

Having considered the chain of events detailed above, and all the evidence on file, I have reached the same conclusions as our investigator and for broadly the same reasons.

The documentation produced at the time of advice confirmed that the SI portfolio had a “growth” risk profile with a diversified set of assets within the portfolio. Mr S was confirmed as having no need to access the funds for an extended period of over ten years.

Given Mr S’s investment experience I would consider him to have sufficient experience of investments and volatility, with their being no evidence within the file to suggest the agreed risk profile was unsuitable.

I have considered the additional point made stating that the focus of the new SI portfolio on sustainable investments introduced a concentration risk that had not previously been present, and this had increased the risk level of the SI portfolio to an unsuitable level. I however do not agree.

The fact the SI portfolio concentrated on sustainable investments would not in isolation make the portfolio higher risk. Sustainable investments can be diversified into different asset classes and geographical locations with their being no reason to suggest UBS could not sufficiently diversify the portfolio to ensure they remained within the agreed “growth” risk profile. UBS confirmed this at the time of advice stating: *“Their risk/return characteristics are in line with ‘traditional’ mandate solutions and target a similar performance in the long run.”*

Whilst the historical CMP strategy may not have had the same constraints in only targeting sustainable investments, this itself does not make the recommendation to move into the SI portfolio unsuitable.

In addition to the concentration risk, Mr S has also stated that the 100% hedging of the SI portfolio to Sterling also increased the risks associated with the new investment proposition to an unsuitable level, and that had he been aware of this hedging Mr S would not have agreed to the recommendation.

Regarding the hedging, I do not believe this moved the SI portfolio to a position where it no longer met the agreed risk profile. The advice documentation confirms that the SI portfolio was a diverse portfolio looking to make investment returns from cash, bonds, and equities with a more “global approach” than the CMP strategy.

Whilst I note the commentary on file stating that the complainants believe there is a correlation between the performance of investment assets in a particular geographical location and the strength of the local currency, the SI Portfolio was not looking to make

returns based on currency changes.

The hedging back to Sterling allowed the investment managers to concentrate on making investment gains in global markets whilst removing the possibility of any such foreign gains being undone by currency fluctuations.

Whilst I accept that over the time the SI portfolio was held it underperformed the CMP strategy, this does not mean the recommendation of the SI portfolio with its underlying hedging was unsuitable.

I have carefully considered the commentary stating that had Mr S been aware of the currency hedge, he would not have accepted the recommendation to move his pension investments into the SI portfolio.

The evidence here is contradictory. UBS have stated that the hedging on the SI portfolio was disclosed to another Business A director on a call held on 4 June 2020. That director has stated that this was not the case.

I have assessed the call notes provided by UBS covering this 4 June 2020 call and the commentary included is inconclusive. The call notes confirm that there was frustration with aspects of the current investment solution and alternatives were discussed. These included the SI portfolio however any discussions around the specifics of the offering (notably the hedging) are not included in the call notes.

Our investigator concluded that the discretionary service mandate gave UBS the right to amend the investments as they saw fit without referring back to Mr S (or the other policy holders) before changes were made and as such the inclusion of their hedging on the portfolio was their decision to make.

I have fully considered the requirement for UBS to provide sufficient (clear and not misleading) information however remain of the opinion that our investigators outcome was reasonable.

The discretionary service mandate agreed by all policyholders gave UBS significant authority to manage the pensions funds, making any changes they thought reasonable in order to seek investment growth over the longer term. No authority was required from any of the policy holders before such changes were made with UBS only having to ensure they remained within their remit as laid out in the mandate.

As such, the provision of underlying investment specifics at the time of advice would be of limited value, as UBS could change these at any time. The key consideration is whether the recommendation of the SI portfolio itself was suitable, and as per the rationale above I have decided it was.

Mr S has stated that the SI portfolio would not have been accepted had the hedging applied to the portfolio been fully discussed beforehand. It is impossible for me to know exactly what was said at that time, or to know whether Mr S (or any of the other policyholders) would have acted differently. Whilst Mr S has been clear he would have made an alternative decision, this statement must be placed in context. Mr S (and the other policyholders) statements came with the benefit of hindsight once performance figures could be compared.

Whilst I accept that given the choice the policyholders would now make an alternative investment decision, I do not believe there is sufficient evidence to conclude they would have done so in 2020.

Having reached these conclusions, I have gone on to consider the performance aspect of the complaint. Here I also agree with the outcome previously communicated by our investigator.

I accept that the performance of the investment was not as Mr S expected, and that it had underperformed the previously held CPM strategy, however, there were no guarantees associated with the SI portfolio and no evidence that that investments were not managed by UBS as per the agreed mandate.

Overall, whilst I accept this is not the outcome Mr S wanted, I am not upholding this complaint.

My final decision

In line with the rationale above I am not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 22 March 2024.

John Rogowski
Ombudsman