

## The complaint

Mrs W complains about the redress offered by Investec Wealth & Investment Limited, referred to as “Investec”.

In summary, she says that compensation – in the form of discretionary management charges and losses in terms of growth that should’ve been made had the investment been managed properly – isn’t fair or reasonable in the circumstances.

Mrs W is being assisted by her husband Mr W.

## What happened

Mrs W had an Individual Savings Account (ISA) portfolio with Investec, previously managed on a discretionary basis for capital growth in line with a ‘medium-high’ risk profile.

In August 2020 Mr W contacted Mrs W’s investment manager to discuss instructions regarding investments in his name only. Mr W wished to suspend the discretionary mandate in respect of his portfolio and provided instructions along those lines. Although the investment manager carried out his instructions, she also suspended the active management of Mrs W’s portfolio. I understand that she did so on the erroneous basis that Mr W was also providing instructions on Mrs W’s behalf.

In a Final Response Letter (FRL) dated 24 August 2022 Investec upheld the complaint. In summary, it said:

- In 2020 it wrongly suspended the discretionary mandate associated with Mrs W’s investment, after receiving instructions from Mr W to suspend the mandate in relation to his investment only. It also incorrectly continued to deduct management fees.
- To put things right it offered to refund the management fees that it charged whilst trading activity was suspended, as well as the financial losses that Mrs W suffered.
- In order to determine the financial loss Investec used its inhouse model portfolio, which involved a benchmark aligned with a medium-high risk profile with a capital growth objective.
- A portfolio managed without constraints would’ve provided returns of 18.5%. Therefore, the difference, between the actual value and the notional value is 1.3%, which equates to £3,995.12 calculated on the original investment of £307,317.
- Investec has added this amount to the portfolio and refunded portfolio management fees of £8,607.00 for this period.

Unhappy with Investec’s response Mrs W referred the complaint to our service.

One of our investigators considered the complaint and initially thought it should be upheld. In summary, he said:

- Because Investec upheld the complaint, it accepts that it didn’t act with authority from Mrs W, so the key issue to consider is redress.
- The relevant period in question ran from 28 August 2020 to 16 August 2022.

- On 28 August 2020, the value of Mrs W's investment was £307,317. This increased to £360,222 by 16 August 2022, which is a 17.2% change.
- Mrs W's portfolio managed in line with her mandate could've achieved better returns.
- In the early days, the portfolio performed better against the Total Return (TR) benchmark – which is an external benchmark different to the inhouse model used by Investec. In other words, when actively managed, the portfolio provided returns in excess of the TR benchmark.
  - Information provided to Mrs W showed that the TR benchmark provided returns of 24.5% for the period between 28 August 2020 and 16 August 2022.
- It's unlikely that Mrs W's investment, if it had continued to be actively managed, wouldn't have provided returns at least in line with the TR benchmark. Therefore, any losses should be calculated against the TR benchmark.
- So, to put things right, using the valuation of £307,317 on 28 August 2020, Investec should calculate what the value of the portfolio would've been on 16 August 2022, using the TR benchmark at 24% return.
- If there's a difference between the notional value and the actual value, Investec should refund the loss into the portfolio. Investec may deduct the necessary fees.
- It should also pay Mrs W £300 compensation for the distress and inconvenience caused.

Mr W disagreed with the investigator's view and asked for an ombudsman's decision. There's been much correspondence between him, the investigator and Investec. But in summary, Mr W made the following key points:

- He was unhappy about the comparison with the TR benchmark that didn't go on to do so well.
- He appreciates the point made by the investigator regarding the volatility of the markets post Covid, but this is surely already reflected in the relatively poor performance of the TR benchmark between 29 June 2021 to 16 August 2022 compared to the earlier period.
- Using an imaginary £100,000 investment, he can't understand why anyone would think it reasonable to assume that an experienced investment manager, who previously beat the TR benchmark by a considerable margin between 5 April 2019 and 29 June 2021, wouldn't then match its performance – and would suffer a loss between 29 June 2021 and 16 August 2022, when the TR benchmark made gains in that period.
- Having considered the data provided by Investec, he's not persuaded to change his mind.
- Despite managing 3,442 clients with the same risk profile as Mrs W's, he's surprised that Investec only referred to those managed by Mrs W's investment manager.
- Despite what was said in the investment manager's letter dated 24 August 2022 – namely that Mrs W's portfolio had returned 17.2% (gross) over the period of 28 August 2020 to 16 August 2022 – the investigator's attachment (for the period of August 2020 to end of July 2022) suggests it returned only 11.18%.

Investec also didn't agree with the investigator's view and made the following observations:

- It accepts that it mismanaged the portfolio during the specified time. That's why it offered redress with a refund of management fees.
- Because it's not possible to calculate exactly what the consumer should've been in it has used an appropriate benchmark instead.
- It notes the basis upon which the investigator suggests the TR benchmarks should be used. However, whilst it acknowledges that the portfolio outperformed the TR benchmark (between 3 June 2021 and 29 June 2021) it's surprised that past

performance is being used in this instance as a justification for using a particular benchmark.

- It considers that the investment manager would've continued to invest in line with its Strategic Asset Allocation (SAA). The markets were very different to those periods in which the investigator considered how the portfolio performed against the TR benchmark.
- Its calculation was based on an actively managed research model portfolio of the same mandate. Key rationale being:
  - It provides a clear mandate in terms of how a portfolio of the same mandate should be invested in terms of SAA.
  - It's actively managed by its research department.
  - The return is produced gross of fees.
  - It's benchmarked the same as Mrs W's ISA.
- It also undertook an internal calculation across all other portfolios managed by it, with the same service and mandate, which showed an average return below that of its research department.
- If it were to compare the portfolio against the TR benchmark it would suggest that the portfolio would not only have been one of the best performing across its business, but also its peers.
- Information about the investment manager's wider client base – with the same mandate as Mrs W's portfolio – shows an average return of 8.02% which is lower than what it paid by way of redress. Mrs W's portfolio was the best performing portfolio amongst the investment manager's clients.

The investigator having considered the additional points was persuaded to change his mind in favour of Investec. In summary, he said:

- In his initial view dated 16 June 2023, he concluded (perhaps unfairly) that the calculation conducted by Investec didn't consider the performance of Mrs W's investment manager. Historically, Mrs W's portfolio had always outperformed the benchmark which it had been pitted against.
- He also felt that the redress calculation performed by Investec didn't match the benchmark, let alone outperform it.
- He also had sympathy for Mr W's argument that Investec's calculations weren't transparent. So, he initially asked for redress to be calculated using the TR benchmark.
- Investec disagreed and maintained that it had calculated redress fairly, and it wasn't fair or reasonable to expect redress to be calculated using a benchmark in respect of which there was no evidence the portfolio would've matched, and that he shouldn't rely on historic evidence.
- Having received additional information, he's satisfied that average return for the investment manager's clients was 8.02% - based on those clients with a capital growth objective but excluding portfolios with cherished holdings and CGT restrictions – for the period under consideration. Mrs W's portfolio achieved returns greater than this for the same period at 11.18%.
- The other portfolios in number order were 10.66% at second place, 9.80% at third place, 9.49% at fourth place, and 8.92% at fifth place.
- Because the redress offered by Investec was greater than the average portfolio performance of the portfolios managed by Mrs W's investment manager, the redress is fair and reasonable.

Mr W raised further questions, in response to which Investec provided the following answers:

- A filter was left on when it provided information. But it has updated this as per the first

attachment provided.

- July 2022 was used as the date produced per month's end. However, additional information has been added in case they wanted this information.

Mr W made the following observations:

- Even if the information provided in the recent emails is correct, he doesn't know how this progresses matters.
- In its letter to Mrs W dated 24 August 2022 Investec stated that her portfolio returned 17.2% over the period of 28 August 2020 to 16 August 2022. In the same letter Investec said its actively managed portfolio returned 18.5% - a difference of 1.3% compared to Mrs W's portfolio.
- He's obviously missed the evidence which shows that Investec's calculations are fair.

As no agreement has been reached the matter was passed to me for review.

In late April 2024, I issued my provisional decision, a copy of which is stated below and forms part of my final decision. In the decision I said:

*"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 latest conclusion for much the same reasons. I'm going to uphold this complaint.*

*Because Investec upheld the complaint the key issue for me to consider is redress. Having done so, I think the redress methodology applied (and paid) by Investec – using its inhouse model and benchmark aligned with a medium-high risk profile with a capital growth objective – is broadly fair and reasonable.*

*In addition to a refund of the management fees for the relevant period – which I also think is broadly fair and reasonable – Investec should pay Mrs W £300 compensation for the distress and inconvenience caused.*

*Before I explain why this is the case, I think it's important for me to note I very much recognise Mrs W's strength of feeling about this matter. Mr W has provided submissions to support the complaint, which I've read and considered carefully. However, I hope he and Mrs W 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 by the parties 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 W, and Investec, and reach what I think is an independent, fair, and reasonable decision based on the facts of the case. I don't need any further evidence to make my decision.*

*I uphold this complaint, in brief, for the following reasons:*

- *Whilst I appreciate what Mr W says about the TR benchmark, and what he thinks should happen about (calculating) redress, I think his points are made with the benefit of hindsight.*
- *I don't think it's fair or reasonable that Mr W can choose which benchmark/methodology should be used by Investec to calculate redress – based on what he thinks is the most beneficial – just because it made a mistake to begin with.*

- *Without the benefit of hindsight, it's difficult to know (with any degree of certainty) what would've happened with Mrs W's portfolio. In this instance, and on balance, I think the methodology used by Investec – in line with its SAA and based on actively a managed research model portfolio – is broadly fair and reasonable.*
- *I'm satisfied that Investec's approach takes into account the unpredictability and volatility of the markets - which isn't something that I can dismiss.*
- *On balance I'm persuaded by Investec's point that, if it were to compare the portfolio against the TR benchmark, it would show that the portfolio would not only have been one of the best performing across its business but also its peers.*
- *In the circumstances and on balance, I don't think this is a reasonable standard by which redress should be calculated in this case.*
  - *It's arguable that Mrs W's portfolio could end up benefitting from Investec's error which isn't the purpose of redress.*
- *I'm mindful that there's no way of knowing how Mrs W's portfolio would've performed, which is why I'm persuaded by the Investec's approach which I think is broadly fair and reasonable in the circumstances.*
- *Based on what Investec says, I note that the information about the investment manager's wider client base – with the same mandate as Mrs W's portfolio – shows an average return of 8.02% for portfolios with a capital growth objective, excluding portfolios with cherished holdings and CGT restrictions.*
- *From the sample provided I'm aware that this figure is lower than what Investec already paid by way of redress.*
- *Put differently, Investec calculated and paid redress which is higher than this (average) figure even though this meant Mrs W's portfolio was the best performing portfolio amongst her investment manager's clients.*
- *Whilst I note that Mr W doesn't agree, on balance I'm satisfied that the redress figure is broadly above the average performance of the top performing portfolios managed by Mrs W's investment manager. It's likely that using a wider sample (presumably with lower returns) would reduce the average figure in any event.*
- *In any case, in the circumstances, I wouldn't expect Investec to use an average of all its investment customers as a basis for calculating redress – I don't think that would be fair.*
- *I'm mindful that Investec has already calculated and paid redress in terms of the losses suffered by Mrs W's portfolio (I've already dealt with Mr W's objections in relation to this). Investec has also calculated and refunded the management fees for the relevant period which Mr W doesn't object to.*
- *In the circumstances I think Investec should pay Mrs W £300 compensation for the distress and inconvenience caused, in addition to the loss and refund of management fees already paid.*
- *I'm aware that Mrs W was already going through a difficult time, and this issue would've undoubtedly made matters worse for her. Put differently, in the circumstances I think this incident would've had a notable impact on her, especially given the sums involved.*

*I appreciate Mrs W will be thoroughly unhappy that I've upheld the complaint but still not given her what she wants.*

*Furthermore, I realise my decision isn't what she and Mr W want to hear. Whilst I appreciate their frustration, I can't give them what they want."*

I gave the parties an opportunity to respond to my provisional decision and provide any further submissions they wished me to consider before I considered my final decision, if appropriate to do so.

Investec responded and accepted my provisional decision. It didn't make any material additional points. The investigator clarified that this complaint would be recorded in favour of the complainant.

Mr W also responded and provided Valuation Reports (VR) in the post – as at 5 July 2022 and 5 October 2022 – along with, in short, the following key submissions:

- Quarterly statements provided by Investec has shown the following ISA portfolio values:
  - £304,875 on 3 July 2020.
  - £310,868 on 5 October 2020.
  - £331,880 on 5 July 2022.
  - £332,713 on 5 October 2022.
- Investec has mentioned various ISA portfolio value figures – including £307,317 for August 2020, and £360,222 August 2022 – for which it hasn't provided a detailed VR.
- He can find no evidence that the value of his wife's portfolio increased by 5.43% to £360,222 – in the period 31 July 2022 to 16 August 2022 – and then reduced by 7.64% to £332,713 – in the period 16 August 2022 to 5 October 2022.
- Investec stated that in the period August 2020 to end of July 2022 the value of Mrs W's ISA portfolio had returned 11.18% which equates to £341,675 but again it hasn't provided a detailed VR.
- If Investec can't provide the necessary information, the performance of the actively managed portfolio should be compared with the average of the valuations of Mrs W's ISA portfolio on 5 July 2022 (£331,880) and 5 October 2022 (£332,713) which is £332,296 as these are the only verified figures.
- Investec said its actively managed portfolio returned 18.5% in the period 28 August 2020 to 16 August 2022. This means the value of Mrs W's should've increased to £364,171 in that period.
- If Investec can't provide a detailed VR as at 16 August 2022 which shows that its calculations are correct, fair compensation would be £364,171 less £332,296 which is £31,875.

### **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, despite what Mr W says, my decision to uphold this complaint remains the same, principally for the same reasons as set out in my provisional decision.

I'm grateful for Mr W's latest submissions, however, having considered his points I'm satisfied that no new material points have been made that persuades me I should change the redress I awarded in my provisional decision.

On the face of the evidence, and on balance, despite Mr L's latest submissions, I still think this complaint should be upheld and redress paid as suggested in my provisional decision – and final decision below – principally because I think it's a fair and reasonable award.

In other words, because Investec upheld the complaint the key issue for me to consider was (and is) redress. Having done so, and despite what Mr W says, I still think the redress methodology applied (and paid) by Investec – using its inhouse model and benchmark (in line with its SAA and based on an actively managed research model portfolio) aligned with a medium-high risk profile with a capital growth objective – is broadly fair and reasonable.

I acknowledge that there's just no way of knowing for sure what decisions would've been taken had the discretionary mandate not been suspended in error, and how the Mrs W's ISA portfolio would've performed as a consequence of this.

Despite what Mr W says about how he thinks the redress should be calculated – which I don't agree with primarily because it's done so with the benefit of hindsight – on the face of the available evidence, and on balance, for the reasons set in my provisional decision I still think the approach taken by Investec is broadly fair and reasonable.

In addition to a refund of the management fees for the relevant period – which I also think is fair and reasonable – Investec should still pay Mrs W £300 compensation for the distress and inconvenience caused. I still think the overall redress is fair and reasonable.

If Mr W still has questions about the redress calculation, I'm sure Investec will be happy to assist.

### **Putting things right**

Because Investec Wealth & Investment Limited has already calculated and paid the losses on Mrs W's portfolio, as well as a refund of the relevant management fees which I think is broadly fair and reasonable, I direct it to pay Mrs W another £300 compensation for the distress and inconvenience caused.

### **My final decision**

For the reasons set out above, and in my provisional decision, I uphold this complaint.

Investec Wealth & Investment Limited should pay redress as set out above.

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

Dara Islam  
**Ombudsman**