

The complaint

Miss K, represented by Mrs K, complains that Investec Wealth & Investment Limited sold part of a holding of shares contrary to an agreement to retain them.

What happened

Mrs K and her husband, along with their children, Miss K and her brother, were all customers of Investec.

Mrs K had inherited a number of shareholdings, including one in Shell, which is the subject of this complaint. During 2020 she had discussions with Investec's advisor about the inherited shareholdings and an agreement was reached that some of the smaller holdings would be sold and the remainder, including the Shell shares, transferred to Mrs K's children.

The transfer took place in June 2020, with Miss K and her brother both receiving 1750 Shell shares into their discretionary managed stocks and shares ISAs. The transfer process involved the shares being sold at £12.93 and repurchased at £13.10.

Later, in late 2022, Mrs K became aware that part of both transferred Shell holdings had been sold – 600 shares in January 2021 at a price of £14.38 and 500 shares in October 2021 at £17.12.

Mrs K complained to Investec about this on behalf of Miss K and her brother, as she considered that an agreement had been reached that the shares would be held long-term with an aim of any eventual sale achieving a price of at least £20.

Investec didn't uphold the complaint. It noted the 2020 discussions between Mrs K and the adviser and while accepting that there'd been a general agreement that the shares would be held until the price recovered, it stressed that they were held on a discretionary managed basis. In that context the adviser had taken the decision in light of the increase in price to reduce the weighting of the holding within the ISAs. It highlighted that file notes of reviews carried out during 2021 supported this strategy having been agreed.

Mrs K didn't accept Investec's explanation and referred the complaint to this service, but our investigator didn't think it should be upheld. He accepted that the holdings had been subject to discretionary management and felt the notes of the 2021 reviews supported the overall strategy having been accepted. He didn't think there'd been an express instruction given to not sell.

Mrs K didn't accept the investigator's opinion, so the matter's been referred to me review. For clarity this decision relates to Miss K. A complaint in respect of her brother has been dealt with separately.

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've come to the same conclusions as those reached by the investigator and for broadly the same reasons. I want to assure Mrs K that I've read and considered everything on the file. But that said, I'm satisfied I don't need to comment on every point raised to reach what I consider to be a fair and reasonable decision. Where I've chosen not to comment on something, it's not because I haven't considered it. It's because I've focused on what I think are the key issues. That approach is in line with the rules we operate under.

Further, where the evidence is incomplete or inconclusive, I've reached my decision based on the balance of probabilities. That is, what I think is more likely than not to have happened in light of the available evidence and a consideration of the wider circumstances.

As noted, during 2021 Investec's adviser made two partial sales of the holding of Shell shares that had been transferred to Miss K's ISA from Mrs K in June 2020. There had been a discretionary management arrangement in place since 2017 for Miss K's ISA, meaning that, broadly speaking, the adviser was entitled to make investment decisions as he saw fit.

In that context, making the partial sales at times when the price had risen from the transfer price of £13.10 (and the subsequent low of £9.33 in October 2020), at £14.38 and £17.12 doesn't seem unreasonable. Neither does the idea of 'top-slicing' to de-risk and adjust the weighting of the portfolio. The transferred in Shell shares had represented around 20% of the portfolio prior to the sales.

What's disputed is whether these sales were actioned contrary to an agreement that, despite the overarching discretionary arrangement, the Shell shares would be held for the long-term and/or their price had rallied to the pre-2020 level of above £20.

I've listened to the telephone conversations between the adviser and Mrs K that took place in March 2020 and June 2020, discussing what to do with the inherited shares and the potential transfer of some of them to Miss K and her brother. In the first of these calls there are references to keeping the shares for two to three years and when the price reaches £20. But I think they constitute fairly informal initial discussions – this was three months before the transfers were actioned – and I don't think they can reasonably be considered to have formed an agreement that superseded the discretionary arrangement in any way.

In the second call, which took place only a couple of days before the transfer in June 2020, similar references were made to holding the Shell shares for the long-term. But on this occasion, there was no mention of price. Of note is the fact that one of the other transferred holdings was described as being 'embargoed' at that point, implying that it was subject to special arrangements. But there was no mention at this point of Shell being similarly restricted.

So, I've not seen anything that I feel confirms that there was an agreement in place prior to the sales of January and October 2021 that the Shell shares should not be sold, either at all, or until they reached a specific price.

A review meeting was held in late October 2021, after the second sale had taken place, attended by the adviser, Mrs K, her husband and their son, but not Miss K. Investec's file note of that meeting indicates that there was discussion of the Shell shares and a strategy of 'top-slicing', both with Mrs K and her husband and also with their son – specifically, *"Again we are going to continue with reducing Shell when the share price recovers likely in its entirety to invest in the collectives or new investments as per the strategy which was agreed."*

Mrs K has strongly refuted that there was any discussion of the Shell shares in this review meeting and points to the fact the summary of the meeting sent to her and her husband

following the meeting made no reference to the Shell shares or the strategy. But that summary expressly concerned her and her husband's investments. They were not the owners of the Shell shares, so I don't think it's surprising that they weren't referred to. Discussion of the shares and the strategy was however referenced in the summaries sent separately to Miss K and her brother in December 2021.

In all the circumstances, I find I'm unable to conclude that Investec's adviser acted incorrectly in making the sales in 2021. Given the nature of the discussions in 2020 I can understand why Mrs K may have been under the impression that there was an agreement in place in respect of the Shell shares – how long they should be held for and a minimum price at which they should be sold. And that being so, I can understand her concern when she discovered the partial sales had been made – particularly as this appears to have been at a point at which the price had reached in excess of £20.

But I've not seen anything beyond the informal discussions of 2020 that could be reasonably construed as an agreement to hold the Shell shares for a specific length of time or sell at a specific price that superseded the discretion afforded to the adviser by the agreement Miss K signed in 2017.

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 Miss K to accept or reject my decision before 28 October 2024.

James Harris
Ombudsman