DRN-5091102

The complaint

Ms A complains that UBS AG didn't adhere to the agreed investment instructions for her investment portfolio, and this caused her a loss.

What happened

The background and the second provisional decision (which includes the initial provisional decision within it) are set out below this final decision and form part of it.

Following my second provisional decision Ms A made a number of points, I'll summarise the key ones below:

- She didn't agree that had she received a discretionary managed service she would've sold down her investments as she did in reality.
- She had not received the correct Loan to Value (LTV) for her portfolio. And it had not been explained how a margin call worked.
- She didn't agree that a number of accounts that had been excluded from the calculations should be. I'll only refer here specifically to the accounts that would've made a material difference. Certain accounts were never invested, and I'll discuss any account invested post 2020 as one.
- She did not agree that account no (5**4740) (as it was referred to in the provisional decision – the tables attached below have had to be redacted but both parties have copies of the unredacted tables in the provisional decisions sent out previously) should be excluded from the calculations. And Ms A provided further evidence as to why.
- She did not agree that account no (5**8370) should be excluded from the calculations. And Ms A provided further evidence as to why.
- Ms A didn't agree that following reviews such as the 2018 review should've meant she ought to have known the accounts were not all managed the same way. She said she was a single mother of three working full time and did not pick up on these subtleties. She had been bombarded by lengthy and obtuse communications so simply didn't notice.
- There was nothing to suggest the later investments were made on a different basis to what she agreed at outset. Nor that she should've been aware she wasn't receiving a DFM service.
- She asked that the start date for the calculations be the day she transferred over the £1.75million to UBS. And to clarify each account that is part of the redress.
- She has not been reimbursed for the accountancy costs UBS said it would pay as a gesture of goodwill.

Following Ms A's response and additional information regarding the two accounts mentioned specifically above, I put it to UBS that this evidence was in my view more persuasive than the evidence they'd provided for not including these two accounts.

UBS responded to say its position had not changed regarding why it felt they shouldn't be included but in the interests of concluding this complaint they would include both within their loss calculation.

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.

Following the responses to the second provisional decision, my view on matters has changed only in relation to the two specific accounts mentioned above. But as UBS has agreed to include these within the redress methodology, it's not necessary to explain why in any detail. Other than I wasn't persuaded after receiving Ms A's counter arguments, testimony and further evidence that Ms A would've known those accounts were different to the expectations she had for the others.

For the reasons explained in my previous decision I remain of the view that the accounts taken out after Ms A sold down her assets should not form part of the redress. Whilst I appreciate Ms A said she hadn't seen this information. It was presented clearly to her and on a number of occasions. I do agree with her that some of the information provided to her over the years wasn't clear and this will have made it more difficult to fully grasp the position of all of her investments (and the fact that there were so many accounts and different investment services). But in fairness to UBS, it did clearly set out which account had what investment service from 2018 onwards, alongside an explanation of the accounts and what each investment service was. And customers have an obligation to mitigate their circumstances and read the information provided to them. Had Ms A read this information and been unhappy with any part of it, UBS would've had the opportunity to put things right then. Furthermore, when the new accounts were taken out after the disinvestment in 2020, she was given information contrary to the agreed terms and charges in 2016. So she could've raised that then if she was unhappy.

Ms A has also argued that the accounts that do form part of the redress should have an end date for the calculation purposes of when she left UBS. But for the same reasons as above, I think the end of February 2020 when she disinvested is a fair date to use. And as I've said before, she will receive redress for lost investment growth for the period after this in any event.

Ms A's said had she been in the agreed discretionary managed service from the outset for all her accounts she wouldn't have sold down her investments. But I don't think UBS' error would have made a difference here for the reasons explained previously. Ms A's agreement to invest under the discretionary management service was within a particular investment fund solution that she was subsequently invested within in any event (this product was then changed to an advisory service), the error UBS made was not communicating that this investment service had changed. I think its more likely than not that she would've disinvested regardless of the investment service applied to her funds. I've upheld this complaint due to the lack of communication around this change and the knock-on effects of this in regard to the agreed charging structure. Furthermore, as I've explained above, Ms A will receive redress as lost investment growth across the period she is arguing should be included as part of the redress.

I've thought about the information provided to her about the LTV again and Ms A's belief that this impacted her decision making. But again I am not persuaded that UBS's error had any impact on this. This would've occurred regardless of the investment service applied to her accounts. And secondly, I'm also not persuaded that earlier knowledge of the LTV ratio, explained to Ms A just before she sold down her investments, would've changed matters. I say this because in the call prior to selling all her investments, Ms A was given the correct information regarding the LTV and advised to stay invested. But a day later Ms A chose to disinvest. The situation with COVID and investment markets at the time were unprecedented. Had Ms A been aware of the correct LTV amount at outset, I don't think it would've caused any concern at the time nor altered what happened afterwards.

Ms A has asked that the starting date for the calculations is the day the money reached UBS and not the investment dates. But I see no reason to change it from the date the individual accounts/investments were made. I've seen nothing to suggest this would've changed had Ms A had the discretionary managed service within the fund solution agreed.

Regarding the accountancy costs, UBS said it would pay these as a gesture of goodwill before the complaint reached us and so hasn't been commented on in this complaint. I would therefore expect it to make this payment in the spirit of bringing these complaint issues to an end.

I need to make clear for taxation purposes that the 8% simple investment growth applied from the date of calculation to the end date, isn't interest. It is an award for investment growth.

For the avoidance of doubt the accounts that should form part of the redress are those that were previously agreed as set out in my second provisional decision (the tables here have been redacted but both parties have copy of the originals) plus (5**4740) and (5**8370).

Putting things right

Fair compensation

In assessing what would be fair compensation, I have come to a simplified solution which I believe fairly compensates Ms A for UBS's mistake regarding the initial setup of her accounts. Please note: the award for distress and inconvenience is considered in the linked case under a separate reference.

What should UBS do?

To compensate Ms A fairly, UBS must:

- Compare the performance of Ms A's investment with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investment. If the *actual value* is greater than the *fair value*, no compensation is payable.

- UBS should also add the additional investment growth to this figure as set out below to the compensation payable.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional investment growth
Accounts as set out in the table included within the provisional decision and the further two set out in this decision.	No longer exists	ARC Balanced Index	Date of investment	End of February 2020	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.

The ARC Index gives monthly returns so UBS has said to overcome this it will use the Modified Dietz Method for additions and withdrawals and I agree that this is fair and reasonable.

Why is this remedy suitable?

I have chosen this method of compensation because:

- Ms A wanted a discretionary managed service.
- The ARC Indices are a set of benchmarks that reflect the likely performance investors can receive if their wealth is professionally managed.
- The ARC Balanced Index is the most suitable considering her aims and attitude to risk for her investment accounts.
- The additional investment growth is to bring any loss up to date.

My final decision

I uphold this complaint and direct UBS AG on notification of Ms A's acceptance to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A to accept or reject my decision before 15 November 2024.

Simon Hollingshead
Ombudsman

PROVISIONAL DECISION

I've considered the relevant information about this complaint.

Since my provisional decision more information has come to light and further arguments made by both sides. So I think it makes sense to clarify my position in a further provisional decision before issuing the final decision.

I'll look at any more comments and evidence that I get by 20 September 2024. But unless the information changes my mind, my final decision is likely to be along the following lines.

The complaint

Ms A complains that UBS AG didn't adhere to the agreed investment instructions for her investment portfolio and this caused her a loss.

What happened

I've set out below the background to this complaint so far including my initial provisional decision in italics and a smaller font to differentiate this from the starting point of this decision. I have included it for ease of reference for both parties.

'Ms A's complaint spanned a number of products and years. The issues that relate to her SIPP are being looked at under a separate reference. This decision will look into Ms A's investment products held with UBS. Below I will set out in italics the previous provisional decision.

Investigator's view with amended background

One of our investigators looked into matters and upheld the complaint. I've included an amended copy of his recommendation letter (concentrating on the points I think are relevant) and a summary of the responses we've received to date below:

'Ms A says she agreed to invest her divorce settlement with UBS's discretionary management service as she didn't have the knowledge or experience to make important investment decisions. However, she found out in 2020 that it was set up on an Advisory basis. She believes her entire portfolio was mis sold as she believes had the portfolio been managed on a discretionary basis the designated fund managers were better placed to make expert financial decisions when required. This was particularly relevant in March 2020 when the stock market was very volatile.

To resolve the complaint Ms A would like to be put back into the position she would've been had UBS invested her money in a Discretionary service instead of an Advisory service for all of the proceeds (£1.25 million). She also asked for:

- *Refund of all fees and charges with 8% added interest*
- *Single payment of £25,000 for the distress and inconvenience caused.*
- *This is to reflect:*
- *Her professional time (as a solicitor) spent in trying to understand what happened to her investments as she understood the money was being managed on a discretionary service.*
- *Distress and inconvenience.*
- *Professional accountant fees – in the amount of £384, following UBS's failure of not declaring all of her tax liability.*

Background

Ms A sought UBS's investment advice following a divorce settlement in 2015. She had around £3 million and wanted advice on how to invest.

Ms A became a potential customer of UBS in December 2015 when conversation about her divorce settlement lump sum was first discussed. Following a number of meetings, in April/May 2016, Ms A opened her first UBS account – Personal Account, which includes an ISA and a General Investment Account (GIA).

In July 2016, Ms A's Canada Life International ("CLI") Offshore Bond started. UBS invested £1.25 million into the TM UBS UK Global Balanced Fund – a "Moderate investment strategy" in line with Ms A's attitude to investment risk.

In October 2016, UBS advised Ms A's UBS's IM Funds Solution portfolio service be delivered through the Global Balanced Fund for the ISA and GIA.

Ms A also has a Lombard Loan Facility with UBS which was opened in October 2016 with a maximum facility limit of £1.25 million. The Loan Facility acts as a cash reserve and is secured against assets held in her Offshore Bond and her Personal Account.

In March 2020, following the global market turbulence caused by Covid 19, Ms A received a call from UBS that she says was very troubling. It was about a margin call.

Ms A was informed that there was a risk of a 'margin call' as her assets – CLI Offshore Bond and Personal Account, held against the Loan Facility rose above the Loan to Value (LTV) ratios. So she was informed that if there is a margin call she may have to either sell some of the assets or deposit new money into the account to avoid the margin call.

It was around this point Ms A realised that her service wasn't managed in line with the discretionary service that she thought she had agreed to. With so many things going on – market turbulence, threat of margin call, she panicked and sold all her funds within the ISA, GIA and CLI Offshore Bond. Not long after she chose to re-investment this money believing the sales to have been a mistake.

Soon after this Ms A says she became aware of a number of things, in particular that her investment wasn't managed in line with a Discretionary Management service, she formally complained to UBS in January 2022 as there seems to be a large disparity between what she wanted and what she was advised by UBS.

Although the cash within CLI Offshore Bond, ISA and GIA were later reinvested in different funds, the crux of Ms A's complaint is that UBS acted unfairly by not carrying out her wishes and managing her investment in line with a 'Discretionary Management' mandate.

UBS' response to Ms A's concerns:

- *They were sorry that Ms A felt she thought she agreed to a 'Discretionary Service'. But the evidence shows she was advised to invest in to the CLI Offshore Bond on an 'Advisory' basis.*
- *With regards to Ms A's Personal Account, in October 2016, UBS recommended UBS's IM Funds Solution portfolio service delivered through the Global Balanced Fund, again on an Advisory basis.*
- *In November 2016, they also confirmed that the segregated Discretionary Service that Ms A had previously discussed with UBS's Financial Planning team at the outset did not match her requirements to meet her investment objectives.*
- *On a yearly basis, UBS carried out annual reviews of Ms A's accounts and confirmed that UBS's investment services remained suitable based on Ms A's risk profile and investment objectives.*
- *Information about the lending facility were provided to Ms A in June 2016 following a number of conversations. They were satisfied key information, including when a 'margin call' may come into force was discussed.*
- *They were satisfied their recommendation to switch IM Funds Solution portfolio held in Ms A's CLI Offshore Bond Account from the Global Balanced Fund to UK Income Focus Fund in March/April 2019 was suitable.*
- *They believe that they could've been clearer about UBS' Chief Investment Office's ("CIO") view in relation to the UK Income Focus Fund and explanation UBS provided when they advised the switch in 2019. They note the concerns Ms A raised to UBS in July 2020 about her investment in*

the UK Income Focus Fund, and they are sorry that this was not looked into further at the time.

- *UBS were not required to contact Ms A when investments were down, in particular holdings that were not recommended by them.*
- *They were satisfied their margin call discussion wasn't unfair or threatening.*
- *They were satisfied they sent clear communication about their advice, charges and general communications.*
- *Although they've not acted outside the term and conditions (T&Cs), they were prepared to pay Ms A's accountant charges of £384, as a gesture of goodwill.*
- *Overall, UBS felt Ms A received an acceptable level of service since 2016.*
- *However, Ms A's complaint has been upheld in part and therefore it suggests £4,000 compensation including:*
- *£3,3743.48 in annual management fees charged on Ms A's UK Income Focus fund portfolio.*
- *Rest for the distress and inconvenience caused (£256.52).*

Unhappy with the outcome, Ms A referred her complaint to our service for an independent review. She says she didn't receive the follow up communications after the initial advice in June 2016 when UBS decided by themselves that they couldn't offer a 'Discretionary service'.

The investigator's findings

Having reviewed all the evidence available to me, I don't think UBS acted fairly. I'll explain why.

COBS 9.2.1. (2) -(c) investment objectives From what I've reviewed, the earliest point when UBS knew Ms A's investment objective was in June 2016 when it sent her a summary of what she told them she wanted from her investment. The amongst other things relevant section of report states the following: "you wish to appoint UBS to invest these funds on your behalf on a discretionary basis"

I noted the following comments from UBS:

"On 1 November 2016, redacted sent you a suitability letter confirming the earlier discussions in June 2016 and October 2016 recommending UBS's IM Funds Solution service delivered through the Global Balanced Fund. This letter also confirmed that the segregated Discretionary service that you had previously discussed with redacted and UBS's Financial Planning team at the outset did not match your requirements to meet your Investment Objectives."

However, I've seen no evidence that Ms A was no longer looking for a 'discretionary service'.

So, I think UBS acted unfairly when they decided that – "Discretionary service that you had previously discussed with redacted and UBS's Financial Planning team at the outset did not match your requirements".

In my view, that's not a decision that UBS can make – it is Ms A's money and her investment objective. If UBS could not offer a Discretionary service then it needed a decision from Ms A before proceeding to invest her money. From what I've seen they didn't explain why they couldn't offer a Discretionary service to Ms A nor obtained her decision that she was still ok to proceed.

Having reviewed everything, I've not seen any evidence that Ms A's investment objective changed. As such, I feel this is enough to uphold the complaint.

I've also found another piece of evidence that persuaded me it was reasonable for Ms A to believe her investment was being managed by UBS on a discretionary basis. It is the CLI Offshore Bond application form signed by Ms A on 14 June 2016 and accepted by UBS on 7 July 2016 Section 8 titled "Investment Service", in particular 8d discretionary fund manager nomination – screen shot below.

UBS has focused on the activities in late 2016 – mainly to justify their recommendation. However, the agreement between UBS and CLI was signed on 14 and 23 June 2016 and application form. So it couldn't have advised Ms A in November 2016 as it seems to have suggested several times as the above is clear evidence that UBS had already started the process to invest Ms A's money almost five *months prior. By UBS's own admission this would mean an application was obtained from Ms A before suitable advice was provided – meaning they didn't follow any of the COBS 9.2.1 rules.*

In any case, I'm satisfied UBS advised Ms A in June 2016 – or at least led her to believe that they had advised at these points. But as the they made an error and invested her money in alternative proposition to a 'discretionary service' I think they've acted unfairly.

Furthermore, I think UBS' error put Ms A in a vulnerable position. She was put in a position where she was required to take time out from her day to day life and make investment decision – which I mentioned earlier UBS had no way of knowing she had the knowledge and experience to do.

In my view, UBS put Ms A in a vulnerable position to make a financial decision on money she previously did not have, nor had experience of investing. I believe this put a huge burden on Ms A when she was asked to make a financial decision in March 2020 onwards - when the global stock market was seeing losses as high as 10% a day – when she received a call about the 'margin call'.

I think due to her inexperience she panicked and made a decision in hindsight her Discretionary Fund Manager should've made - had she been advised correctly to invest in the right investment proposition.

Would Ms A have invested anyway?

Having considered everything, although I think UBS didn't satisfy COBS 9.2.1, therefore didn't treat Ms A fairly, I think she would've invested her money anyway. This is because it was Ms A who sought UBS for advice. But from the evidence I've seen, I'm not persuaded it would've been Advisory, execution only or a limited advise service. Based on what I know now, I don't think it was unsuitable for Ms A to invest £1.25 million in a portfolio that matched her risk appetite and investment proposition. Meaning, I don't think it was unsuitable for Ms A to invest in risk based assets such as bonds, equities and other financial instruments.

I also think, and based on what I know now, with her large cash reserve, Ms A also had the capacity for loss. Meaning she could tolerate investment volatility as she had enough money to fall back on. However, I think she would've invested her money in a Discretionary service as she needed someone with expertise to look after her money and make financial decisions for her.

So if it had been invested correctly in a Discretionary service, I think on the balance of probabilities, she would've, more likely than not left the money invested and would've appreciated the professional management of her investment throughout her relationship with UBS.

Other complaint points

I appreciate the points Ms A makes about the lending facility. But I feel she would've still gone ahead with the facility despite the lack of clarity and information that she says she received about the service. Furthermore, she also benefited from the service when compared to traditional mortgage lending.

I'm mindful that UBS has offered to pay compensation of £4,000, which includes a refund of annual charges and distress and inconvenience payment. However, I don't think their offer is fair and reasonable.

How to put things right

In assessing what would be fair compensation, I consider that my aim should be to put Ms A as close to the position she would probably now be in if she received a 'discretionary service'.

I am satisfied that what I have set out below is fair and reasonable given Ms A's circumstances and objectives when she invested.

What should UBS do?

To compensate Ms A fairly UBS should:

- *Compare the performance of Ms A's investment with that of the benchmark shown below and pay the difference between the fair value and the actual value of the investment. If the actual value is greater than the fair value, no compensation is payable….*

- *Overall average return over the period achieved by UBS Discretionary Service with a similar proposition to what Ms A would put her as closely to the position she would've been had no error been made. It does not mean that Ms A would have invested in an average return based Discretionary portfolio or an index tracker fund. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Ms A could have obtained from a Discretionary service investments suited to her objective and risk attitude.'*

Ms A broadly accepted the view but responded in summary to say:

- *There is no publicly available information about the benchmark recommended*
- *UBS doesn't run a model portfolio. And the performance of each clients' portfolio depends on a number of factors. And she negotiated her own fees whereas other clients may not have*
- *She doesn't believe UBS' performance data can be relied upon*
- *She suggested a more suitable benchmark would be the ARC balanced index*

UBS said in summary:

- *It believed it had met the requirements of COBS in relation to fact-finding and evidencing Ms A's knowledge and experience*
- *It said initially discussions had been based on investing in the Global Balanced Fund through a Discretionary portfolio but before being ready to invest, it changed to an Advisory service instead. It said the underlying investments didn't change. The solution advised was a managed fund where UBS made day to day decisions for the client and in this way it mirrored a Discretionary service. It still believed the service it provided was suitable for Ms A.*
- *However, it recognised the way this was communicated to Ms A was not clear.*
- *It didn't agree that had Ms A had the discretionary service she wouldn't have sold down her investments at the time of the margin call in March 2020. The circumstances of the margin call wouldn't have changed whether or not a discretionary service had been used. UBS at the time advised Ms A to remain invested. And under its Discretionary service it still requires clients to instruct UBS on sales and purchases of investments. It said in light of this it should not be held responsible for the losses incurred when Ms A instructed it to sell down her investments in March 2020.*
- *It had calculated Ms A's losses in line with the investigator's recommendation and it had found Ms A had made a gain by investing as she did in reality.*

<u>The findings I made in my initial provisional decision</u>

I agree with some of the reasoning set out by the investigator and that the complaint should be upheld. But I disagree with how he suggested we put things right.

As I've said in relation to the linked complaint where a lot of the circumstances are similar, I have concerns about the information provided by UBS at the time to Ms A. It appears that significant documents like the suitability report which detailed the change in investment mandate was at best only sent to the portal and not directly to Ms A. Also, the evidence provided of phone conversations with Ms A and what was discussed is lacking in detail and is difficult to verify as legitimate. The change in investment service also had the consequence of altering the charging structure of Ms A's investments – something Ms A had spent some time discussing with UBS to come to an agreed bespoke arrangement. I don't think UBS set out the charges clearly at outset and I don't think it acted fairly when it changed the investment service. Nor did it communicate the change in charges clearly afterwards. So overall I don't think it has acted fairly for these reasons and I think it needs to do something to put things right.

As UBS appears to accept it didn't communicate clearly with Ms A in relation to the change of *investment service, I will focus on how to put things right in this decision. Having reviewed the investigator's recommendation and the responses of Ms A and UBS, I don't think the current recommendation is fair and reasonable. I'll explain why.*

My objective here is to consider what would've happened had UBS acted fairly and provide a resolution that is fair and reasonable to both parties. It is not possible to say with any confidence what would've happened had UBS acted fairly. I can't be confident as to what Ms A would've been invested in and nor the charges she would've paid due to the complexity of the products involved. Unless it is clear what would've happened, we generally tend to use a benchmark that broadly matches the customers attitude to risk and circumstances at the time. And I think that is particularly appropriate in this scenario considering the complexity of the arrangements. I would not be able to independently verify what UBS tells us in terms of a loss calculation based on a benchmark of its discretionary management service. And secondly the charging structure applied ought to have been Ms A's bespoke arrangement agreed initially. So instead, I believe an index matching Ms A's balanced investment objective for these accounts is in my view suitable.

However, I accept UBS's position that whether or not Ms A had received the discretionary service or its advisory service it wouldn't have changed events around March 2020. In late February 2020 due to the instability caused by COVID-19, markets crashed and Ms A's investments lost a lot of value. As she's admitted she panicked and against UBS's advice she sold these down at a low point of the market. Had Ms A been using the discretionary service, she wouldn't have been protected from this market instability and she still would've had the ability to instruct UBS to sell down these investments – and it would've had to accept these instructions against its advice – as happened in reality. So I don't think this would've made a difference to Ms A's actions or the end result regardless of the investment solution used by UBS.

With this in mind I think it would be fair for UBS to model against the benchmark as if Ms A hadn't sold these investments and instead switch these out at the date Ms A re-invested for the purposes of the loss calculation. I think Ms A's suggestion of using the ARC Balanced Index seems reasonable here, its benchmarks are based on the performance of discretionary fund managers and so are reflective of the service Ms A wished to have. And I think the balanced index broadly matches the risks and type of investments Ms A was looking for here.'

<u>Responses and correspondence since my provisional decision</u>

Since my provisional decision there has been quite a bit of correspondence between us and both parties. However, I've only set out below the key information regarding matters still in dispute and the changes in my decision since the initial provisional decision.

UBS agreed broadly with the methodology but felt some amendments were required to make it work. It became clear that the accounts UBS felt should be included in the calculations were different to Ms A's expectation. In my provisional decision, due to the lack of explanation/evidence of the accounts setup I didn't identify specific accounts but made comment later to both parties that execution only accounts shouldn't form part of the methodology.

Due to this I asked Ms A to include all the accounts she felt should be included and asked UBS to provide an explanation/evidence of the accounts it disagreed with. I will deal with this in this second provisional decision as it is something that needs to be ironed out before the final decision.

Ms A said she didn't understand the redress methodology around the smoothing out of her decision to sell down the assets during early 2020. We explained to her that:

'UBS has proposed that the calculation comparison ends on the last day of February 2020 – ARC publish month to month which is the rationale for this exact date. So this would compare the ARC index against your reality up until the end of February 2020. And then going forward to bring the loss calculation up to date it will calculate 8% simple added for

investment growth on this figure to the end date. We think this is a fair suggestion and will also provide a simpler and easier way to verify the calculation'

I had also questioned UBS's use of the Modified Dietz Method for the loss calculation as our approach is not to use an averaging method. It explained:

'Whilst UBS understands the recommendation of FOS for incorporating the returns from the very first day rather than the average method, which would make sense if we had ARC daily returns, however as you are aware ARC provides monthly returns and therefore this would not make it an unfair comparison.

We provide an example to explain our rationale:

A portfolio strategy yielded a return of 10% for the first 20 days of the month and then dropped by 5% for the rest of the month. The total return for the month would be +4.5% (effect of compounding). Had the client invested £10K on 20th of the month, it would not have captured the positive 4.5% return but would have lost by 5% ending the month at £9.5K.

As ARC only provides monthly returns, if for the same month ARC returns were 3%, since we are simulating the portfolio, we cannot say that from the first day of investment(i.e. 20th of the month) the simulated portfolio would have grown by 3% ending at £10.3K. This would not be a like to like calculation, and hence we use the Modified Dietz Methodology. UBS uses Modified Dietz Method to ensure there is a fair comparison with ARC.'

Ms A also responded to say she didn't agree that the fact she sold the investments in March 2020 should be taken into account in the calculation as she felt UBS were responsible for her panicked decision. Ms A says she did not act against UBS' advice as was stated in the decision and by UBS. Ms A attached a call and said nowhere in this call did UBS give any advice, the adviser just referred to her email instructions to sell and then after the call she received confirmation of the sale.

I noticed that this evidence showed there had been an earlier call and asked both parties for evidence of this. UBS has sent us the call and Ms A was able to send us a generated transcript and her thoughts on these calls. I will go onto discuss this further below.

What I've provisionally decided – and why

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

And having done so, my overall decision remains broadly the same but there are some changes to how I think things should be put right. And it is important to set out the specific accounts that should be included within the loss calculation. Unless either party can demonstrate I have made an error in my thinking, I intend to issue a final decision soon after the deadline for responses. The case(s) have gone on for some time now and a final decision needs to be reached so that both parties can move on. Our service is meant to resolve complaints quickly and informally and both parties have had plenty of opportunities to engage with the case, so I intend to bring this complaint to an end now unless there is something fundamentally wrong with my decision.

Ultimately, I think the redress methodology I'll set out is fair and reasonable – it doesn't attempt to perfectly mirror what may have happened as that would be fraught with difficulties. Instead, it provides a simplified solution, which I am satisfied resolves this complaint fairly for both parties.

The sale of Ms A’s assets and is it fair to set the date of calculation prior to that sale?

I said in my first provisional decision that I agreed with UBS’ argument that had Ms A received the discretionary management solution as agreed, she would’ve still sold down her investments when the markets fell. I said that UBS could smooth this out in the compensation by working out the value of her portfolio as if she hadn’t sold those investments and run them through until she re-invested. However, UBS said it would instead run the calculation to the end of month before they were sold (due to the benchmark only producing monthly figures) and then add 8% simple to bring the loss up to date. I accepted that as a fair solution and let Ms A know.

Ms A responded to say she didn’t agree with my reasoning that she had sold against UBS’s advice. And she said she thinks what UBS did at the time was insufficient to put her fears at rest and had they acted fairly and reasonably she wouldn’t have sold those investments. Having looked at the evidence I don’t agree. Ms A says UBS should’ve done more to dissuade her but the market volatility and world circumstances at the time was almost unprecedented so I think it wouldn’t be fair and reasonable to expect the UBS adviser(s) to be absolutely definitive in everything they said.

Ms A would’ve still been in the same position had she received the discretionary managed service within the investment solution and there would’ve been the same pressures and losses to consider. And ultimately it would still have been Ms A who had the final say. This was an extraordinary situation and the evidence shows that UBS’ advised Ms A to remain invested and she went against this advice.

In any event the calculation adds 8% simple to any loss at that date, over the period of time Ms A is arguing should be included. So she will be compensated for this additional period of time to date. The methodology compares the performance of Ms A’s funds until the end of February 2020 against the ARC balanced index and then any loss at the date is increased by 8% simple from that date to the current date. Ms A also complained about the overall performance of her funds with UBS and whilst returns above 8% simple may have been achievable over that period of time, Ms A said in reality she received poor performance up until she left UBS. And in coming to the conclusion that 8% simple over this period is fair and reasonable, I’ve taken into account that the loss calculation doesn’t include any reduction for the charges she would’ve paid if she did have the discretionary managed service she requested.

The accounts that should form part of the redress

Ms A sent a list of all the accounts she felt should be included. I’ve attached below, UBS’s responses to which accounts it believes are affected by its error:

Personal portfolios and accounts

P/f no	Acc no	Opening Date	Closing Date	Type of portfolio	Notes
[redacted]	[redacted]	09/05/2016	01/04/2020	Advisory Service	Out of scope for calculations
		18/10/2016	28/03/2020	Execution Only Loan Account	Out of scope for calculations
		12/06/2017	06/04/2020	Limited Advice	Included in calculations
		12/06/2017	06/04/2020	Limited Advice	Included in calculations
		10/05/2016	22/04/2022	Limited Advice ISA	Included in calculations
		11/05/2016	22/04/2022	Execution Only ISA Account	Out of scope for calculations

I’ll only discuss the accounts in dispute and not the ones that UBS have agreed should form part of the calculation:

Our final decisions are published so I will not be able to refer to the whole account number nor will I be able to include the table above in the final decision. So I've referred to specific accounts when required by an amended shorter account no. listed in brackets.

Starting with the top account (5**4740). UBS has produced evidence that shows Ms A selected this account to be an advisory service and not a discretionary service. It's shown that Ms A completed and signed an opening account form and chose the UBS advisory service for this portfolio.

Part 4A: Accounts and Services

UBS Advisory

We will automatically open a UBS Advisory account on the terms set out in the Terms and Conditions, unless (i) you request us not to or (ii) it is not required for the service you are receiving from us. This account will allow you to, among other things, deposit investment holdings that are acceptable to us, process internal and external fund transfers and receive advice from us on any investment opportunities which we feel may be of interest to you.

Your client advisor will discuss with you your investment objectives, risk profile, and likely trading frequency. Your client advisor will also provide you with the Fee Schedule and payment terms, UBS AG, London Branch that come into effect on 31 December 2012.

Account fees
Please tick **one** of the boxes below to confirm your fees preference for your UBS Advisory account (if none are selected, we will assign Fee Option 2 to your UBS Advisory account):

☐ **Fee Option 1**
The annual fee includes UBS Wealth Management securities trading (except for futures, options and FX conversion fees).

☑ **Fee Option 2**
The annual fee does not include UBS Wealth Management securities trading, futures, options or FX conversion fees (which are charged on a per trade basis).

Note that if you regularly trade above the levels we normally expect for the size of your account, we reserve the right to review your eligibility for Fee Option 1 and apply Fee Option 2 instead.

Execution Only

We will also open an Execution Only account on the terms set out in the Terms and Conditions (i) if you instruct us to; (ii) as and when required (for instance when assets can no longer be held within the UBS Advisory account for whatever reason); or (iii) on the first time you give us an instruction to effect an Execution Only transaction on your behalf. You retain full responsibility for making all investment decisions with respect to Execution Only transactions. Please note that if the Execution Only account is not opened at the time you give us your first instruction there may be a delay in processing your instruction whilst we open the account.

Please note that you are only able to purchase products in your Execution Only account that we have confirmed are retrocession-free. Retrocessions are payments from product providers which typically represent a portion of the providers' annual management fee which we receive in addition to the fees stated in our standard Fee Schedule. Products which may be retrocession-bearing (for which you will need to select a retrocession-free option) include, but are not limited to, investment funds, hedge funds and structured products. This restriction does not apply to Per Se Professional clients.

Other Services

For further information about any of our other services, including UBS Active Portfolio Advisory, UBS Discretionary, Hedge Fund Advisory, Direct Access and Financial Planning, please contact your Client Advisor.

This was also completed after Ms A had in January 2016 and April 2016 discussed via email with UBS the option of a balanced discretionary portfolio – so she was aware of this option and she chose the advisory service – and the evidence shows if she required other services to contact the client adviser. The evidence also shows that Ms A chose to open an execution only account at the same time and an ISA account using the IM Funds Solution, so she was aware there were different investment solutions available.

It was this IM Funds Solution portfolio that ought to or was going to be provided as a discretionary managed service but UBS reviewed this service and amended it to be a limited advice service before Ms A's accounts were set up. Ms A's complaint has been upheld due to the fact UBS seemingly didn't explain this (or cannot demonstrate it did) to Ms A, its suitability letters explaining this weren't sent to her directly but to the providers client portal (and Ms A could see no record of this) and even then its explanation wasn't clear – saying it didn't match her requirements. And not that it was no longer available for that particular investment solution. However, I would say the solution provided isn't too dissimilar to what Ms A requested. As shown in the explanation below:

Suitability of service

- We have discussed the different types of investment solutions UBS can offer you and how each of these make use of the various asset classes, product issuers and market exposures available to you as an investor.
- In the context of this product recommendation, we believe that a segregated Discretionary Service does not match your requirements. You have however stated that you do not wish to be involved in day to day decision making. As such we recommend a solution delivered within a fund structure.
- The UBS (UK) Investment Management Funds Solution we are recommending does not require your ongoing involvement and is delivered through one of the TM UBS (UK) funds, the fund itself being managed by our Investment Management team who implement any changes to the CIO within the fund itself according to your agreed investment strategy. The funds are denominated in GBP.

The TM UBS (UK) - Global Balanced Fund range and why it works for you

- The fund range itself consists of 9 different sub-funds that can fit a range of investment requirements and attitudes to risk.
- The funds themselves are suitable for an investor that has some knowledge of financial markets and is comfortable with the use of Equities, Fixed Income as well as the purchase of UK registered and regulated fund structures.

But this should've been communicated clearly to Ms A and it wasn't. And more to the point and the reason I'm persuaded to uphold this specific part of Ms A's complaint – is that this changed the charges that Ms A had spent some time agreeing with UBS. UBS has admitted its mistake here – and so I am simply now defining which accounts fall under this mistake.

Looking at this account I am persuaded that it shouldn't form part of the redress. Ms A has clearly signed up to the advisory service (and other services) showing her understanding there were different investment solutions. But at the same time her recollections are that she thought she was receiving a discretionary management service for all her accounts where UBS provided advice. This is possibly due to the intricacies of the products UBS ran and also the similarity in terms customer experience the services such as limited advice, advisory and discretionary provided. However, whilst UBS made an error, I don't think this was deliberate as it did later clearly set out the investment solution applied to the accounts in question. From 2018 in its annual reviews, it set out an explanation of all the accounts Ms A had with it and the different investment solutions applied. And here it's clear the account in question is listed as UBS Advisory whereas her other non-execution only accounts are shown to be under the IM Funds Solution.

In any event, following the opening of this account Ms A was given further advice to move the majority of the funds held in this account (80%) into the three highlighted accounts above that are included in the redress calculations. So much of the money held in this account will in part be included in the calculations.

Below is the 2018 review letter sent to Ms A, setting out the different accounts and the investment solution applied.

lio er	Portfolio Type	Currency	Risk Profile/ Strategy
00	UBS Advisory	GBP	Aggressive (Equities)
00	Execution Only	GBP	Not applicable
00	Execution Only	GBP	Third Party Cash Deposits
00	Execution Only	GBP	Loan account
00	IM Funds Solution (TM)	GBP	Aggressive (Growth)
00	IM Funds Solution (TM)	GBP	Moderate (Balanced)
00	IM Funds Solution (TM) ISA	GBP	Moderate (Balanced)

Furthermore, within this letter that is addressed to Ms A's home address it explains the different investment solutions it provides:

Service types recommended

Following a discussion on the types of service that you require, as well as an explanation of the services we offer, we recommend the following service types:

UBS Manage™: our discretionary service, designed specifically for clients who wish to have UBS implement our House View without the need for day-to-day involvement in the decision making.

UBS Advice™: designed for clients who wish to be actively involved in the implementation of our investment recommendations. No transactions will be executed without your prior agreement or without UBS having provided a statement of suitability for you to review. The service is suited to clients who feel comfortable taking an agreed and consistent approach to risk over time, and who are happy to implement the securities we feel comfortable recommending.

Investment Management Funds Solution: designed for clients who wish to access our Investment Management capabilities implemented through one or two fund structures.

Execution Only service: designed for clients who want to execute their investment decisions without any advice provided by UBS. The investor protections (where applicable) associated with our other offerings do not apply to Execution Only (EO) services. For EO transactions we will only assess appropriateness of the transactions you wish to execute.

So at this point it should've been clear to Ms A none of her accounts were being run under its discretionary service – as none were listed as UBS Manage. I don't think it would be fair to cap any loss at this date as it was UBS's error and I think the benefit of the doubt should go to the client rather than the professional firm who should've made sure it communicated clearly at outset. However, customers also have a responsibility to mitigate their circumstances and I think Ms A was made aware at this point that she was not receiving a discretionary service. I'll expand on this point later when discussing the re-investment of her funds – and the new accounts which followed.

The second account down (5**4743) was an execution only loan account and therefore shouldn't be included and the same goes for the execution only ISA account (5**474992).

Offshore bond portfolios and accounts

P/f no	Ac[redacted]	Opening Date	Closing Date	Type of p/f	Notes
[redacted]	[redacted]	20/07/2016	30/05/2022	Execution Only Account	Out of scope for calculations
[redacted]	[redacted]	28/10/2016	05/01/2022	Limited Advice	Included in calculations
[redacted]	[redacted]	07/05/2019	10/12/2020	Execution Only / Prev Limited Advice	Included in calculations
[redacted]	[redacted]	07/05/2019	10/12/2020	Execution Only Account	Out of scope for calculations
[redacted]	[redacted]	03/09/2020	05/01/2022	Limited Advice	Out of scope for calculations
[redacted]	[redacted]	03/09/2020	05/04/2022	Limited Advice	Out of scope for calculations

With regards to the offshore bonds, again the top account (5**8370) is an execution only account and so is the fourth account. Furthermore, account (5**8372) was split and this was confirmed in a letter on 14 September 2020 addressed to Ms A's home address. This said:

'ISA portfolio: We agreed to reduce your Lmt Advice ISA portfolio to a proportion of 2:1 between UBS Managed and Execution Only assets. Using a current valuation that would mean keeping £114,850 into the Global Balanced Fund with the remaining funds being invested on an Execution Only basis.'

Accounts (5**8373) and (5**8374) were setup in 2020 and I think by this time Ms A ought to have been aware that these accounts were not being provided under the same terms as what she thought she had for her accounts taken out in 2016.

I understand these accounts were taken out to facilitate the reinvestment of her funds following Ms A's decision to sell all her investments in relation to the market turmoil that occurred during Covid 19.

At this point I think it ought to have been clear to Ms A that she hadn't been receiving a discretionary managed service from UBS. This was some years after she had asked for this service and she had received letters showing that this service wasn't something she was receiving.

UBS sent Ms A the Key Investor Documents and the fund factsheets alongside suitability reports in 2020 during the re-investment of her funds. This showed the charges applicable to the funds she would be investing in and not a flat discretionary fee as agreed at outset in 2016. Looking at the evidence, I cannot be sure what information regarding the funds invested in was sent regarding each account. But I can see email trails from around the time that Ms A said she'd received suitability reports and supporting documents regarding her re-investment in her investment and pension accounts. So I am satisfied Ms A did receive further information regarding her investments when she came to re-invest.

Further to this, Ms A's position as to why her complaint should be upheld is essentially that in 2016 she agreed terms that she would be provided a discretionary managed service and that this would be provided at the costs she had agreed then. And it wasn't until much later that she'd realised this wasn't the case.

I've taken this from our complaint form:

How would you like the business to put things right for you?

On the basis of my current understanding of how UBS has managed my investment portfolio, I am seeking to recover the following: (a) A fair amount of compensation to reflect the poor outcome resulting from my portfolios held with UBS which did not take account of my personal circumstances, were not communicated to me clearly and did not meet the expectations set and communicated by UBS. I believe that this should equate to the difference between: (i) the actual value of my investment portfolio at today's date, as *compared with (ii) what my investment portfolio would been worth had it been invested from inception to today (without any liquidation in March 2020) on a discretionary managed service;'*

In fairness to Ms A many of her gripes (included in her complaint but not copied above) in terms of how complicated her investment accounts are and the way in which information is provided – I've shared as I've attempted to get to the bottom of what has occurred here. But Ms A's position ultimately comes down to the fact she wants to be redressed as if she'd been in a discretionary fund management solution for all accounts from the outset. And that she wasn't, is only something she has come to realise at a much later point.

Ms A had a lot of correspondence with her advisers and didn't simply accept everything they told her. And having input was clearly something she valued – which it was entitled to charge for.

I don't think Ms A's experience with UBS meets the profile of someone who thought they were purely relying on a discretionary fund manager to manage all their accounts based on one set of terms agreed in 2016. For example around her re-investment Ms A said:

'From: Ms A
Sent: 27 March 2020 15:21
To: UBS
Subject: [External] Reinvestment amounts
… Following our call please can you reinvest the following amounts. In addition, please can you use £150,000 from my UBS current accounts to reduce the Lombard loan.
Personal Account..
Blue Prism 20,000.00 Enquest 2,000.00 Keystone Law 8,000.00 UK Income Focus 20,000.00
ISA Account
Global balanced 55,000.00
EAS Sub-Account
15,000.00 UK Growth 15,000.00 OSB UK Income Focus 310,000.00
Pension
UK Growth 125,000.00
Total
570,000.00
I will plan to reinvest the remaining cash in two more tranches: one in 6 - 8 weeks time and one in 3 – 4 months time.'

I think it's clear from not just this bit of communication but many others that Ms A was taking a keen interest in her investments with UBS – and had quite a bit of belief in her own decision making. I think in making these decisions, she would've looked at the fund factsheets and Key documents and seen there were costs to invest in the fund solutions.

Ms A must have been aware (and was made aware) that UBS wasn't managing all her investments on her behalf without her having to engage or make any decisions – as a DFM would typically do. So I don't think it would be fair nor reasonable to uphold the complaint in full and including all the accounts as if Ms A had always invested in a discretionary investment solution.

I certainly agree that the service provided could've been communicated much clearer in some respects. But ultimately UBS did provide a service to Ms A, I can see they did do a lot of work for her in the accounts they ran for her. Its mistake that I can clearly quantify in terms of misleading Ms A, goes back to 2016/7 and the change of investment solution applied to certain accounts and the charges within. So this is what the redress calculation should look to put right.

I’ve also taken into account that the compensation methodology is in comparison to a discretionary managed index which doesn’t include charges within its performance. And UBS did do a lot of work for Ms A that it is entitled to have been paid for, even though it didn’t implement the charges agreed fairly for some of the accounts. So to compare all the accounts that Ms A’s says should be included against a charge free comparison wouldn’t be fair and reasonable.

Fair compensation

In assessing what would be fair compensation, I have come to a simplified solution which I believe fairly compensates Ms A for UBS’s mistake regarding the initial setup of her accounts. Please note: the award for distress and inconvenience is considered in the linked case considered under a separate reference.

What should UBS do?

To compensate Ms A fairly, UBS must:

- Compare the performance of Ms A's investment with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investment. If the *actual value* is greater than the *fair value*, no compensation is payable.

- UBS should also add the additional investment growth to this figure as set out below to the compensation payable.

Investment name	Status	Benchmark	From (“start date”)	To (“end date”)	Additional investment growth
Accounts as set out in the table included within this provisional decision	No longer exists	ARC Balanced Index	Date of investment	End of February 2020	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.

The ARC Index gives monthly returns so UBS has said to combat this it will use the Modified Dietz Method for additions and withdrawals and I agree that this is fair and reasonable.

Why is this remedy suitable?

I have chosen this method of compensation because:

- Ms A wanted a discretionary managed service

- The ARC Indices are a set of benchmarks that reflect the likely performance investors can receive if their wealth is professionally managed.

- The ARC Balanced Index is the most suitable considering her aims and attitude to risk for her investment accounts.

- The additional investment growth is to bring any loss up to date.

My provisional decision

I intend to uphold this complaint for the reasons explained above.

Simon Hollingshead
Ombudsman