

The complaint

Mr C's complaint against Whitman Asset Management Limited ("Whitman") is about his investment in their AIM inheritance tax (IHT) portfolio service.

What happened

Following a meeting with an adviser (Mr P) from Whitman in August 2021, Mr C invested £1 million in their AIM IHT portfolio service ("the AIM portfolio"). It was a discretionary portfolio management service which aimed to provide investors with exposure to established AIM-quoted investments that were exempt from IHT once they had been held for two years.

The value of Mr C's investment reduced substantially within five months, and he decided to withdraw his funds. Mr C complained to Whitman, initially raising two main points:

- that Mr P didn't contact him during the period of market volatility; and
- that during his initial meeting with Mr P in August 2021 he had understood that the investment would generate at least 10% returns per annum.

Whitman responded to Mr C's complaint in March 2022. They said:

- They sent Mr C a portfolio valuation every week and Mr P sent him a '10% drop notification letter' with market commentary in January 2022. Although Mr C should have been added to their distribution list for monthly factsheets and quarterly market commentary, and in hindsight they could have been more proactive in contacting Mr C, the weekly valuation emails indicate that the lines of communication were very much open.
- They do not assure, or guarantee investment returns as made clear in their risk warnings. Mr P made clear to Mr C that smaller companies were riskier and more volatile and that there was no guarantee of short-term performance or that historic annual returns could be achieved in the future.
- As a gesture of goodwill, they offered Mr C a payment of £8,500.

Mr C sent numerous further letters to Whitman between August 2022 and October 2023 in which he raised a large number of other complaint points. Whitman responded to Mr C's letters but explained that a letter they sent on 29 September 2022 represented their final response to his complaint.

Mr C brought his complaint to the ombudsman service in October 2023. He complained, in summary, that:

- Whitman provided misleading information about the service he was investing in and about the experience of their staff. He said that many of Whitman's promotional statements were unproven and deliberately misleading.

- Whitman's insistence that the AIM portfolio was a long-term investment ignored the fact that he was not a long-term investor because of his age and health concerns.
- Whitman made a number of investment decisions that contributed to his loss and his funds were invested without giving him the opportunity to seek advice as they had indicated was necessary. Whitman had advised that the second tranche of his funds would not be invested for up to three weeks in order to mitigate market movements, but they bought shares within a week. They also sold ten separate shares within six weeks of his investment contrary to their insistence on holding the shares to gain IHT relief.
- Whitman did not state that there was no 'stop loss' policy or procedure in a falling market, and they took no action to prevent the unsustainable loss of up to 30% of his funds.
- Whitman failed to communicate with him at key times. After his investment sustained a loss, Whitman refused to answer his enquiries.

In response to Mr C's complaint, Whitman have said, in summary:

- They made clear to Mr C the risks of the AIM portfolio and that there were no guarantees about its performance. Their promotional literature was part factual and part a statement of aims (and therefore by their nature aspirational). They have reviewed their statements and adjudged them to be true, fair and not misleading.
- The AIM portfolio was suitable for Mr C as part of his overall investment portfolio, most of which he held elsewhere. Mr C's attitude to risk was "4 out of 5", indicating he was happy to risk losses for potential gains. He also said he was "5 out of 5" on the scale of experienced investor. Mr C confirmed in his application that he had received independent investment and tax advice. If he had not done so, he would have been refused access to the AIM portfolio even though the service itself and the size of Mr C's portfolio made it suitable for him. In relation to Mr C's age, they received nothing from Mr C or his adviser indicating any specific vulnerability or health concern that would question the suitability of the IHT portfolio alongside the much larger investment portfolio he held elsewhere.
- Mr C agreed to appoint them as discretionary investment manager of his portfolio. Their obligation was to ensure that the portfolio was managed in line with its aims, which they did. The terms of business made clear they had complete discretion in choice of stocks and the timing of buying and selling provided the overall portfolio met the objective of providing IHT protection. There was no requirement to refer investment decisions to Mr C or another adviser once Mr C had invested his funds with them.
- The underperformance of Mr C's portfolio does not show negligence but in part reflects the position of the AIM marketplace itself. Mr C crystallised his losses when he insisted on withdrawing his funds without waiting to speak to the investment manager or it seems talking to his advisers – therefore also losing the potential tax relief.
- They sent Mr C a portfolio valuation by email every week as he had requested. Mr P also sent Mr C a "10% drop" notification letter on 27 January 2022 (which is a regulatory requirement for a fall in value of 10% in a quarter) with market commentary. Although they could have been more proactive in calling Mr C, the lines

of communication were very much open. Unfortunately, Mr C's email address was not added to their distribution list for monthly factsheets and quarterly market commentary which was an error on their part.

Whitman didn't consent initially to our service looking at Mr C's complaint as they thought Mr C had come to our service more than six months after their final response. In a provisional decision in January 2025 however I found that Mr C brought his complaint to the ombudsman service in time and that the complaint was one that our service could consider.

Both parties accepted that decision and so one of our investigators considered the merits of Mr C's complaint. The investigator decided not to uphold Mr C's complaint and said he would not be asking Whitman to take any action. He said, in summary:

- Documents from the time of sale showed that Mr C was prepared to take a high level of risk and accepted that the value of the IHT portfolio, which represented less than 5% of his total wealth, would fluctuate. Whitman made it clear in the documentation that Mr C's capital was at risk and that the amount realised may be less than the original sum invested.
- Mr C's main aim was to mitigate IHT, and the portfolio offered the potential to achieve that in two years. Most alternative investments would have required a longer qualifying period and so the IHT benefits of the portfolio made it suitable for Mr C.
- Mr C's family was with him at the time of the investment, and he appeared to have been well engaged in the conversation about his potential to invest with Whitman.
- Whitman told Mr C that he should seek separate investment and tax advice before allowing them to manage his funds and the documentation showed he had done that.
- In relation to the marketing of the investment to Mr C, there was no requirement for Whitman to highlight that there was no 'stop loss', which Whitman have said wasn't possible if the investment was going to have the IHT benefits. He couldn't see anything to indicate that Whitman had provided incorrect information about their company, provided misleading information about the potential of the investment or downplayed its risk. The risks were clearly stated, and no guarantees were given about performance.
- While he could understand Mr C's concern about the investment's fall in value, Mr C had previously said he wouldn't be worried if the value fell, and he had intended to invest for two years. Whitman were responsible for taking decisions about the investment of Mr C's funds and they can't be held accountable for the fall in value that occurred, which appears to have been caused by a number of global factors, including the war in Ukraine.
- Whilst Whitman had many discussions with Mr C while he was invested with them, they didn't send him some emails with factsheets that he should have received. He was though given regular updates by one of the portfolio managers.

Mr C disagreed with our investigator's findings and asked for an ombudsman to make a final decision. He said, in summary:

- He was not an 'experienced investor'. That's why he sought an experienced and reliable adviser – a senior director of a fund manager, rather than just a larger fund manager organisation. And regardless of his own capabilities that does not relieve

Whitman of their obligations.

- At the time of investing his age and health made him vulnerable. At the end of their meeting, Mr P told Mr C that he would fill in the information about Mr C's attitude of risk.
- He was reassured that AIM shares were unusually reliable as they were 'government sanctioned' as well as offering the IHT relief. The strong reassurance of 10% per annum growth (later reduced to 8%), rather than the IHT relief, was the fundamental reason for his decision to invest.
- Whitman's promotional material misrepresented the AIM portfolio to him. The claims made in the material – both factual and aspirational – were fundamentally unachievable and the fall in value of about 30% did not remotely reconcile with those claims. Whitman's reference to a highly experienced investment and management team was also misleading.
- No matter what level of risk the AIM portfolio was, if Whitman intended to take no preventative action if the value fell, then promoting an annual increase of 10% is misleading. It is unacceptable that Whitman would buy shares in a falling market and not having a stop loss policy is a failure in their duty of care.

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.

In the background above I have set things out in less detail than Mr C and Whitman have done. The purpose of my decision isn't to address every single point raised by the parties involved. If there's something I've not mentioned, it isn't because I've ignored it. I'm satisfied that I don't need to comment on every individual argument to be able to reach what I think is the right outcome to this complaint. No discourtesy is intended by this; our rules allow me to do it, and it simply reflects the informal nature of our service as a free alternative to the courts.

I should also make clear at the outset that our service has no regulatory or disciplinary powers, which means we can't direct a business how to operate and we can't impose any penalties. We consider each case on its own facts and where things have gone wrong, we look to put them right on a fair and reasonable basis.

Suitability

Whitman didn't provide advice on all of Mr C's investment portfolio, but they did advise him that the AIM portfolio was a suitable investment for him. I will therefore look first at whether I think that was suitable advice.

Whitman provided their advice in August 2021 after Mr P had met with Mr C and a suitability assessment document had been completed. Mr P gathered information about Mr C's investment objectives and financial situation as well as his attitude to risk and experience of investing. I've reviewed those documents and Mr P's note of his meeting with Mr C, as well as the further information provided by both parties, in considering this point.

At the time of the advice, Mr C was in his late 80s and had a net wealth of over £20 million. He was looking to invest £1 million, and his objective was described as "inheritance mitigation and long-term asset growth". Mr C had a large investment portfolio generating an

annual income of about £300,000 a year, which was double his annual expenditure. Mr C's attitude to risk was assessed as high and his capacity to take risk as medium high.

I've considered what Mr C has said about his main aim being growth and that Mr P filled in the information about his attitude to risk. But overall, I think the suitability assessment document was most likely an accurate reflection of what was discussed. Mr C's objectives were both IHT mitigation and growth and he was willing to take a higher level of risk to achieve those objectives.

I can see from the paperwork that Whitman also considered Mr C's age and potential vulnerability. Mr P recorded that Mr C had been ill the previous year but come through it.

In their summary of client suitability Whitman said:

"Given that he is not reliant on the portfolio for incomings coupled with his age and investment objectives (to mitigate IHT) we consider that the AIM IHT product is a suitable investment for him. In addition to this he is investing a relatively small amount of his total wealth in the AIM IHT product."

Based on the information I've seen, I'm satisfied that the AIM portfolio was in line with Mr C's objectives and his attitude to risk. The funds Mr C was investing represented a relatively small proportion of his total investable assets and I think he had the capacity to take a high level of risk with them.

I've thought carefully about Mr C's age and whether the AIM portfolio was suitable for him given that it was described as a long-term investment, and it would take two years to qualify for the IHT mitigation. On balance, I'm satisfied that the advice was suitable for Mr C as one of his objectives in investing these funds was IHT mitigation and the AIM portfolio offered that after just two years, rather than the longer period that would be required by many other products. As noted above, the investment represented a small proportion of Mr C's total assets and overall, I think it was a suitable recommendation for him.

I've considered what Mr C has said about being vulnerable at the time of the advice. As I've noted, Whitman did consider his age and potential vulnerability. But overall, I've not seen enough evidence to say that Mr C wasn't in a position to discuss his investments needs and I'm not persuaded he was pressured or rushed into making a decision to invest in the AIM portfolio.

Information

Whitman also had an obligation to provide information to Mr C that was clear, fair and not misleading. That included information about the product he was investing in and the level of risk involved.

I can't be sure what was said during Mr P's meeting with Mr C in August 2021. I'm satisfied however that Mr P's note of that meeting is most likely an accurate reflection of what was discussed. According to the note, Mr P took Mr C through Whitman's standard presentations and showed him factsheets in relation to both the AIM portfolio and another product. They discussed the pros and cons of smaller company investment, including the greater risk and volatility.

The presentation on the AIM portfolio explained its two specific objectives – to invest in AIM companies that demonstrated attractive growth and income-paying characteristics and to take advantage of IHT relief after being held for two years. It provided information on Whitman's investment philosophy and process and how they constructed a portfolio.

The factsheet explained that it should be regarded as a higher risk, long-term investment, suitable only for investors with financial security that was independent to any investment being made in the AIM portfolio. It said investments were likely to be smaller UK companies which should qualify for the maximum business relief after two years but would inevitably involve higher risk and may be difficult or even impossible to realise in a reasonable timescale or at an acceptable price. It made clear that the product was classified as high risk and should form part of a diversified portfolio.

Once Mr C had provided the necessary information to open his account, Whitman sent him a 'welcome letter' on 13 August 2021. That letter said:

"The Whitman AIM Portfolio is considered a higher risk investment given it is 100% equities with a heavy bias to smaller companies.... The outcome of the questionnaire was that you are assessed as having a high risk level. We therefore consider the Whitman AIM Portfolio service to be suitable given your circumstances."

Based on what I've seen, I think Mr C was provided with sufficiently clear information about the AIM portfolio and the level of risk he was taking.

Mr C has referred to what Whitman said about both past and projected performance of their AIM portfolio and the smaller companies' asset class more generally. Having looked at Whitman's presentation and factsheet, I'm satisfied that they made clear what the past performance data referred to. And I think they made sufficiently clear that any projections of future performance were illustrative, and that past performance was not an indicator of future performance.

Mr C has also complained about information Whitman provided about the experience of their staff. Whitman's presentation included information on the members of their smaller companies' team. The more detailed brochure on the AIM portfolio said that Whitman had a highly experienced management team and provided brief information on members of their smaller companies and management teams. Having looked at this information, and considered what Mr C has said, I've not seen any evidence that the information provided by Whitman was inaccurate or misleading.

Mr C complained that Whitman did not make clear that there was no 'stop loss' policy or procedure for the AIM portfolio in a falling market. As I've already noted, I think the information provided by Whitman made sufficiently clear that the AIM portfolio was intended to be a longer-term investment and that shares needed to be invested for two years to achieve the IHT benefit. There was no requirement that Whitman should explicitly state that there was no 'stop loss' policy on such an investment and I don't think it was unreasonable for them not to do so.

Taken together, Whitman have said that the promotional material provided to Mr C about the AIM portfolio was part factual and part a statement of its aims, and therefore aspirational. I don't think that's unreasonable. The key test I need to apply is whether the material was clear, fair and not misleading and overall, I'm satisfied that it was.

Management of the portfolio

Mr C has raised a number of complaint points about how Whitman invested his funds and managed his portfolio. However, the AIM portfolio was a discretionary portfolio management service, which I think was made clear to Mr C prior to investing. The terms of business he agreed to said that Whitman had full discretion to invest his funds in qualifying investments and manage his portfolio in line with the objectives and principles of the service.

I've considered the points Mr C has raised but the fact that his portfolio fell in value does not necessarily mean that Whitman did something wrong. I've not seen evidence that in managing Mr C's portfolio Whitman acted outside the mandate they had been given or that they acted unreasonably in the decisions they made. I don't think therefore that I can say Whitman have done anything wrong on this point.

Reporting to Mr C

In relation to the information made available to Mr C about the performance of his investment I note the following:

- The welcome letter that Whitman sent to Mr C said he would have access to their online investor portal where he could access a current valuation of his portfolio.
- Whitman sent Mr C a portfolio valuation by email every week as he had requested.
- Mr P also sent Mr C a notification letter in January 2022 when the value of his portfolio had dropped by 10%, along with a market commentary.
- Whitman have said that, due to an error on their part, Mr C's email address was not added to their distribution list for monthly factsheets and quarterly market commentary.

I'm satisfied therefore that Whitman provided Mr C with clear information about how his portfolio was performing. It's unfortunate that Mr C didn't receive the factsheets and market commentary that he should have, but I'm not persuaded that was a factor in the financial loss that Mr C incurred.

Summary

In summary, I think Whitman gave Mr C suitable advice and provided him with sufficiently clear information so that he could make an informed decision about investing in the AIM portfolio. That fact that his portfolio didn't perform as he would have hoped does not mean that Whitman's advice was unsuitable, and I'm satisfied that the risk and potential volatility of the investment was made clear to him at the outset.

I've not seen evidence that any guarantees were given to Mr C about the performance of his portfolio, and it seems to have been affected by events that impacted the wider markets. I note that Mr C chose to sell his investment when it fell in value. That was his decision, and I don't think it would be fair and reasonable for me to hold Whitman responsible for that decision or any losses Mr C has incurred – either directly or indirectly through the loss of any potential tax benefit.

I appreciate that Mr C feels very strongly about what has happened and that this will be a disappointing decision for him. But I don't think it would be fair and reasonable for me to hold Whitman responsible for his losses and I won't be upholding this complaint.

I note that Whitman have previously offered to pay Mr C £8,500 as a gesture of good will. Mr C should contact Whitman to confirm that offer still stands.

My final decision

For the reasons given, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 11 August 2025.

Matthew Young
Ombudsman