

The complaint

Mr and Mrs T have complained that they weren't advised by UBS AG ('UBS') to utilise their annual ISA allowances. They have lost the tax benefits which they want putting right.

What happened

Mr and Mrs T had been clients of UBS since 2004. Over the years they held various joint, sole and SIPP accounts as well as bare trusts for Mr and Mrs T's children. A new adviser was appointed and in April 2021 and Mr and Mrs T sought advice about taking an ISA and opened ISA accounts with UBS.

In January 2024 Mr and Mrs T questioned why they hadn't been advised to use their ISA allowances for many years and in February 2024 UBS treated their concerns as a complaint. UBS issued its response to the complaint on 5 April 2024. It said;

- It didn't offer or give tax advice.
- The use of an ISA as a tax efficient vehicle was widely advertised so the option to open an ISA was available to them at any time.
- It appreciated it may have been helpful if the option of using an ISA had been raised but this wasn't an expectation on UBS' adviser to actively offer them when providing investment advice.
- It wasn't obligated to inform Mr and Mrs T of the opportunity to utilise their ISA allowances so didn't uphold the complaint.

Dissatisfied with the outcome, Mr and Mrs T brought their complaint to the Financial Ombudsman Service. Our investigator who considered the complaint didn't think UBS needed to do anything more. He said;

- Mr and Mrs T's accounts were managed on a 'Self-Directed service' basis and the terms for which meant UBS wasn't obligated to recommend any particular product including ISAs.
- UBS did provide an 'Advisory' service but it was based on information provided to UBS. There were other options including the 'Discretionary service'.
- The types of services offered were reiterated in 2011.
- UBS had a regulatory obligation to make sure any recommendations made were suitable and the absence of any ISA recommendation didn't mean it fell foul of those obligations despite such advice may have resulted in a more advantageous tax position. But that didn't mean the advice they were given was unsuitable.
- The onus wasn't entirely on UBS to have made them aware ISAs could be used.
- Mr T had opened an ISA elsewhere in 2015 and could have explored this with UBS.

Mr and Mrs T didn't agree. They said were led to believe they were being comprehensively advised on all aspects of their investments for which they paid a fee and were lay people

who trusted UBS. They requested their complaint be considered by an ombudsman, so it has been passed to me for decision. They provided further comments for my consideration;

- UBS needed to obtain the necessary information regarding its client's knowledge, experience, financial situation and investment objectives. It would appear UBS wasn't fulfilling this requirement as their financial situation and investment objectives weren't fully explored. If they had been, consideration of tax efficient investments should have been identified and explained.
- They were aware UBS didn't give tax advice but a recommendation for ISA would have been tax efficient advice.
- If such advice had been given at the beginning of their relationship with UBS, they would have been able to make a decision but no advice was provided.
- They were shocked that as lay people they weren't given such advice and that the advice provided by UBS wasn't consistent and depended upon the adviser.

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.

After doing so, I've reached the same conclusion as the investigator and broadly for the same reasons. I'll explain why.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

When I consider a complaint where the customer's assets are looked after by a financial business it wouldn't be unusual for advice given about those assets to include the utilisation of tax efficient investment vehicles if suitable. Clearly this hasn't happened here, so I've looked to see whether UBS was treating its customers fairly and acting reasonably in not providing such advice in the context of the type of agreement they Mr and Mrs T had with UBS.

I've reviewed the type of account Mr and Mrs T had with UBS and whether UBS provided the service it said it would. When the account with UBS was opened in 2004 a choice of the type of service to be received was given. These included Self-Directed, Discretionary, Life, Pension & Health, Active Trading Access, Active Portfolio Advisory and Alternative Investment. The accounts opted for were the Self-Directed and Alternative Investment services.

The application form detailed what was meant by a Self-Directed service;

'At your specific request, we will open such account(s) in your name as you direct, or as we may at our discretion, decide.

...

We will receive instructions from you to execute transactions which may or may not be based upon investment recommendations that we make to you.
Please refer to our Terms and Conditions (particularly to the Clause headed "Investment Advisory Services").'

The clause referred to is section 7 of the terms and conditions which said;

‘(b) At your specific request, we shall discuss with you your investment objectives and, in the context of these, we shall advise you of investment opportunities (if any) which we feel may be of interest to you.

...

(e) We have no obligation to bring investment opportunities to your attention. A recommendation from us does not imply any endorsement or guarantee.

UBS later altered the title of the ‘Self Directed’ service to ‘Execution Only’ because of regulatory changes. But my understanding of a Self Directed account is that it is the client that makes all the investment decisions. And this tallies with the terms quoted above. So, while Mr and Mrs T were able to choose from a variety of services they wanted to receive, I think the terms of the service they chose put the obligation on them about what accounts they wanted to open.

The type of service was recapped on in the 2011 Account Opening Form. In ‘Part 4: Accounts and Services’ it said;

‘We will open an account for you on the terms set out in the Terms and Conditions that will allow you, among other things, to deposit securities that are acceptable to us, make cash deposits and process internal and external fund transfers. We may advise you of investment opportunities (if any) which we feel may be of interest to you (without being under obligation to do so) in the context of your investment objectives. Upon receiving our advice you may decide whether to disregard it (in whole or in part) or to act upon it by instructing us to effect a transaction on your behalf. You will also be able to give us instructions to engage in to deal in investments and other assets on your behalf for which you retain full responsibility for making all investment decisions and for ensuring that transactions effected with or through us are appropriate to you.’

‘Additional Services’ could be provided if requested by completing separate documents which included the Portfolio Management Services which was the discretionary managed service and Active Portfolio Advisory which provided advice, but instruction would still be needed by the customer.

I also appreciate that UBS has told us the type of investments Mr T initially wanted exposure to couldn’t be placed in an ISA – there are certain terms that apply as laid down by HMRC. And looking at the 2004 application form I think this is likely. Mr T wanted advice on ‘Derivatives & Structured Products’ which carried additional risk to which Mr T had to sign and agree to, as well as the ‘Alternative Investment Service’, the section for which – Part 7 – highlighted;

‘Regulatory issues

These investments are usually in the form of funds, or collective investment schemes as defined in the Financial Services and Markets Act 2000 (the “UK Act”). Generally they are not authorised, or otherwise approved, by the Financial Services Authority, and are therefore unregulated. They do not carry with them the normal investor protection rights afforded to authorised investments. As such they can not be marketed in the UK to the general public. The Financial Services Regulations permit us to discuss such investments with you, and to make investments in them on your behalf, provided that we have sufficient information about you and your investment objectives. You should discuss investments covered under this Alternative

Investment service section with your client adviser or investment specialist prior to deciding to invest.'

So, I think it unlikely those higher risk type of investments – which I understand Mr T entered into in 2006 via Private Equity and Hedge Fund investments – would be considered as 'qualifying investments' as defined by HMRC. That being said, it's clear from Mr and Mrs T's complaint they would have welcomed the opportunity to have considered the use of ISA wrappers, and I can see assets were held over the years that could have been held within an ISA under the rules.

UBS has told us that it only deals with wealthy customers who have assets in excess of £1m. From what I have seen, Mr and Mrs T's assets stood between £5m and £7m so I appreciate that investment within the annual ISA limits may not be material to that amount and not a core wealth vehicle at that level. UBS has told us its customers pay annual fees to access sophisticated investment products, along with advisory and discretionary services that often may not be accessible via a retail bank where an ISA would be more readily available and at a cheaper cost. And because of this it would not be a priority for UBS to offer an ISA to its clients, and it has no such obligation to do so which I think ties in with the Self-Directed account mandate.

UBS' wealth management service offers products and services often not accessible via a retail bank. And I appreciate it does not manage smaller retail clients where ISAs may more common and more of a priority for tax mitigation. But the terms and conditions of the Self-Directed service meant UBS had no obligation to bring investment opportunities to its customer's attention and any investment opportunities within the context of the customer's investment objectives would be provided upon specific request.

In Mr and Mrs T's submission they have referred to UBS' obligation to ensure that when making a personal recommendation it had the necessary information about them. That is a regulatory obligation laid out in the regulator's – the Financial Conduct Authority ('FCA') – Conduct of Business Sourcebook ('COBS');

'Assessing suitability: the obligations

COBS 9.2.1

(2) When making the personal recommendation or managing his investments, the firm must obtain the necessary information regarding the client's:

- (a) knowledge and experience in the investment field relevant to the specific type of designated investment or service;
- (b) financial situation; and
- (c) investment objectives;

so as to enable the firm to make the recommendation, or take the decision, which is suitable for the client...'

However, that relates to the suitability of the investment advice actually given – the personal recommendation. I can't agree that it places the onus on UBS to highlight to a customer a product it wouldn't necessarily promote. The client account mandate placed that onus on Mr and Mrs T. There are many products and investments that a business like UBS can recommend or advise on and there are various ways an investor can invest for tax efficiency or tax mitigation purposes. But that doesn't mean the business is under the obligation to advise on them all or bring them all to a customer's attention. So, for the purposes of this

complaint, and the suitability rules, it is only for me to consider whether the advice given was suitable and not to take into account what other options were available to them.

I note that Mr T did open a cash ISA with a retail provider in 2015. He's made it clear this was done because of a promotion for enhanced interest rates and he had added cash to the ISA over 18 months. I appreciate Mr and Mrs T say they were unaware they could both open stocks and shares ISAs over the years but ISAs have been well known for 25 years and are well publicised and promoted so I think Mr and Mrs T could have raised the possibility of ISA investment – cash or otherwise – with their adviser at UBS which it has told us it would have been happy to have responded to. And I note Mr T didn't tell UBS about his cash ISA which may have prompted a conversation. But in line with the Self-Directed service the onus was on them to raise the matter.

I'm sorry Mr and Mrs T lost out on the opportunity to use their ISA allowances over the years and appreciate they would have liked to have been able to do so. But for the reasons given I don't think UBS has done anything wrong in not advising them this was something they could be doing.

I appreciate Mr and Mrs T will be disappointed in the outcome. It's clear they understandably feel strongly about it and I'd like to thank them for the time and effort they have spent in bringing their complaint. But I hope I have been able to explain how and why I have reached my decision.

My final decision

For the reasons given, I don't uphold Mr and Mrs T's complaint about UBS AG.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs T to accept or reject my decision before 27 October 2025.

Catherine Langley
Ombudsman