

## The complaint

Mr and Mrs G complain that a portfolio Union Bancaire Privée (UK) Limited (UBP) advised failed to provide a sufficient return to settle a mortgage taken out alongside it.

## What happened

Mr and Mrs G took out a mortgage on a non-advised basis with UBP, secured against a property they already owned outright. The mortgage was for £1.066 million with a term of three years repayable on an interest-only basis. The advice UBP gave was to invest the proceeds of this mortgage in an investment bond to be managed on an ongoing discretionary managed basis.

The mortgage was drawn down in February 2016 commencing the three year term, which UBP extended into an open ended arrangement at or prior to the term being reached. The intended repayment vehicle for the mortgage is disputed by the parties with UBP saying it was to be repaid through the future sale of a property, which first needed to be refurbished. Whereas Mr and Mrs G say they were told the bond would generate enough return to repay the mortgage capital, interest and service the required withdrawals.

When UBP issued the repayment demand on 7 December 2023 the amount required to settle the mortgage was £1,123,294, comprising of £1.066m of the borrowed capital and £57,294 in unpaid interest, the portfolio was worth around £950,000. Mr and Mrs G discussed the repayment with UBP over the following months and in April 2024 repaid most of the mortgage, leaving a balance of around £202,000.

A month later in May 2024 Mr and Mrs G complained to UBP in a phone call that they were unhappy with the arrangement. In asking our service to look into the matter Mr and Mrs G provided more detail about why they were unhappy with it, which UBP has seen a copy of. In this they said they didn't feel UBP had clearly explained the risks during the initial advice or when ongoing advice was given, that the performance of the arrangement had been poor and that interest had been unfairly applied.

UBP considered their complaint but didn't think it should be upheld. In its view the advice it gave was suitable and it would've been clear to Mr and Mrs G within that the portfolio wasn't being arranged to service and repay the loan.

Given this arrangement was entered into more than six years from when Mr and Mrs G made this complaint to UBP, our service first considered whether the complaint was in time. I issued a decision on our jurisdiction where I said the complaint points made to the firm were in time. I passed the complaint back to one of our service's Investigators who then considered the merits of the dispute.

After consideration of Mr and Mrs G's complaint, our Investigator didn't uphold it. He explained he thought the advice given was suitable, the assets invested in under the discretionary arrangement were in line with Mr and Mrs G's risk tolerance, and that the advice had been given on the expectation of a profit from a future property sale.

Mr and Mrs G didn't agree and provided further comments which largely restated their earlier concerns.

As an agreement wasn't reached the complaint was passed to me to decide.

### **What I've decided – and why**

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

Having done so, I've not seen to uphold it. I understand Mr and Mrs G feel strongly about their concerns but taking into account the evidence provided and the relevant rules in place at the relevant times, I'm not persuaded UBP need to compensate them. I'll explain why.

Firstly, later into Mr and Mrs G's complaint being with us did they raise concerns about the level of interest applied by UBP in administering the mortgage, including the basis of any penalty interest being charged to the account. That aspect of the complaint wasn't made to UBP and hasn't itself had a chance to respond to that, as the rules require. I won't then consider that in my decision. Additionally for clarity, I don't consider that the sale of the mortgage itself was part of the complaint, which has in summary been expressed as the portfolio failing to act as the repayment vehicle Mr and Mrs G understood it to be. So I also won't be considering that in my decision. If Mr and Mrs G wanted to pursue either of those aspects further then they'd need to make a new separate complaint about that to the firm first.

I'll turn now to the complaint at hand, whether UBP fairly advised the investment arrangement, the changes made to the strategy and how it performed.

#### Initial Advice

When UBP advised Mr and Mrs G about the investment portfolio it needed to ensure the recommendation it made was suitable. At the time of the initial advice the relevant rules were those in *COBS 9* of the FCA Handbook. Later, given this was an ongoing arrangement, from 3 January 2018 the relevant rules that applied were those in *COBS 9A* of the same handbook.

Broadly those place similar requirements on UBP, that it makes a suitable recommendation and takes enough information from Mr and Mrs G to be able to do that, in particular about their objectives, circumstances and their knowledge and experience of investing. Firms will typically carry out the information gathering part of their obligations in the form of a "fact-find" which typically records the questions asked and the answers given. The recommendation then needs to be set out in writing, commonly referred to as the suitability, or reasons-why, letter.

Unfortunately given the passage of time since the original advice was given, in 2015, those documents are no longer available. I can't then fairly make inferences against UBP for the absence of that information. But there is other documentation, mostly around the mortgage, which provides some context about what most likely happened when this arrangement was entered into.

The overall documentation at the time in my view demonstrates that a key objective of Mr and Mrs G was to increase their income, along with growing the capital value of the amount borrowed. The need for additional income itself was identified due to much of their wealth being held within properties and their business, which a small income was being drawn from. As a way to increase their cashflow they took out a mortgage for £1.066m which UBP advised they invest the proceeds of into an Investment Bond, which around €50,000 a year would be drawn from to meet that need.

I say this because the information taken from Mr and Mrs G at the time of the mortgage application included the following:

“... We are arranging an equity release through a regulated mortgage of £1.066m. This amount will be invested in a DPM mandate through an offshore bond....”

[Mr and Mrs G] pay themselves voluntarily a low salary as their business (...) cover a lot of their personal expenses. They have enough cash aside to pay all the loan interests and a large portion of the loans with [UBP] if necessary. The [loan's] maturity is 3 years but [Property A] will be certainly be sold earlier.”

I don't have copies of suitability letters from before 2018, which again given the passage of time isn't unreasonable. But in my view the 2018 suitability letter sent following an ongoing review of the advice does provide information, which given is an ongoing review of the initial advice and reflects the needs in the 2015 mortgage documentation, is likely in my view a fair reflection of the objectives and reasons why Mr and Mrs G entered into this portfolio in the first place.

The pertinent information within the 2018 suitability letter, which I think likely reflects investment objectives as they were in 2015, is that:

- The objective was to invest the mortgage money to balance growth and income.
- To achieve that, they wanted to take a low to medium level of risk to meet those objectives.
- There was an annual income requirement of €50,000 to pay UK property expenses and to use to repay the mortgage interest.
- They wanted the portfolio professionally managed day to day.

Given that information is consistent with what I can see was recorded in 2015 and was part of an ongoing arrangement, on balance I think it's likely UBP advised at the outset that Mr and Mrs G invest in a discretionary portfolio for growth and income. And that it did so in order to meet their income needs, contribute towards the accruing mortgage interest and to grow the capital value as a savings vehicle.

I've not seen UBP specifically mentioned it, but the general idea behind these arrangements is usually to invest a large amount of money through the means of a mortgage with the aim being that the growth and income earned exceeds the interest costs of it. It allows those with the means to be able to invest capital they don't have immediate access to but benefit from the gains of investing that borrowed money. And ideally, as Mr and Mrs G said should've

happened, be able to repay the mortgage and still have capital remaining. Although that in practice depends on how the portfolio performs over its life, which I've seen no evidence of any guarantees to Mr and Mrs G it would perform as such.

Having considered then whether the investment strategy and how that portfolio was invested, I'm satisfied from the evidence I've seen and have inferred from what was said in 2018 was suitable for them. I say this because in my view investing in this manner met their objectives, risk tolerance and was in line with their circumstances and their knowledge and experience. They also wanted the professional management, including UBP making investment decisions for them, which the discretionary arrangement UBP recommended could provide. I also think taking a low to medium level of risk would be suitable given Mr and Mrs G's business acumen and that they appear to have invested in a discretionary portfolio before, although the details are unclear. In any event if they were inexperienced investors, the level of risk UBP advised them to take wouldn't be one that would, in my view, be unsuitable for new investors looking to take some risk to meet their aims.

Once more I don't have the documentation from the point of advice in 2015, but there are references in the mortgage documentation to a "conservative" strategy, which UBP has also said to be the initial strategy in its final response. I've not seen copies of what UBP told Mr and Mrs G such a portfolio would be invested, but I do have the transactions statement showing the initial trades carried out in the portfolio. This tells me enough to understand a reasonable overall picture of the make-up of that portfolio. Having carefully read this I'm satisfied the assets UBP exposed Mr and Mrs G to was within their risk tolerance. I say this because those early transactions are largely in mainstream large investment funds with exposures to bonds and equities, with some alternatives such as gold and debt holdings, within the proportions and manner that I would expect to see in a portfolio aiming to take the objectives and risk exposure that was deemed suitable for Mr and Mrs G.

I can't fairly say then the initial recommendation and strategy was unsuitable where it, in my view, likely met Mr and Mrs G's objectives and needs for this money. I'm also satisfied it was within their risk tolerance, knowledge and experience. While I can't be sure of what UBP explained about the risks, I'm not able to make any adverse inferences from the absence of evidence around that given the passage of time that's passed since that advice.

#### Subsequent advice – the changes in strategy

2018

In September 2018 following a review of the portfolio, UBP recommended Mr and Mrs G switch from its "conservative" strategy to the "Target Return CPI +3%" Strategy. The notes from the advice meeting, the suitability letter and the recommendation report all explain that Mr and Mrs G's circumstances hadn't materially changed. But because of its concerns around future market performance due to the increase in general market volatility it had seen since the beginning of 2018, it was recommending this change of strategy.

UBP said the new strategy would provide more flexibility and would meet the same objectives and risk level of the previous strategy but would be managed differently. Which given the high balance of "active" investment the portfolio data provided shows likely in my view, means the underlying investments took more of an active management approach. That would mean the underlying assets within the fund are more likely to change their components and be more reactive to risks and opportunities within the markets, while still taking advantage of UBP's overall active management of the portfolio through the discretionary service in place. The risk profile at the time was defined for "low medium", which was the third of five levels, was, "You are looking to achieve capital growth and/or income and you are willing to invest a limited part of your portfolio in risky assets", and said

would include bonds, equities, hedge funds, commodity funds, property funds and structured products, with a typical equity component of around 25%.

Overall, from what the documentation I've seen says about Mr and Mrs G's objectives, risk tolerance and circumstances at the time, I'm satisfied the advice to change strategy was suitable. I say this because UBP's market concerns weren't unreasonable and by making this change it was of the view it could meet Mr and Mrs G's growth and income objectives while mitigating or avoiding some of the volatility it predicted would negatively affect the performance of their portfolio was left as it was. As the portfolio would aim to meet the same objectives and risk profile as before but looking to avoid potential losses ahead, which I don't think were unreasonable concerns given how markets had been performing prior to the advice being given, I'm satisfied the updated mandate to invest their portfolio against was, in my view, suitable.

I've then considered whether the application of the portfolio strategy, the mandate agreed to be suitable in the 2018 advice, was applied in a suitable manner. The rebalance caused the portfolio composition to change, as I'd expect it to given the change in strategy. I've seen from the information provided what those changes entailed and based on the statement provided, that appears to have been carried out in line with the illustrative portfolio UBP provided to Mr and Mrs G within the recommendation report. I'd also note here that given the discretionary manner of this arrangement how the portfolio was initially invested would in any event be subject to change. Even so I think the illustration and statements showing the asset changes is a reliable reference to the sort of assets UBP had in mind suitable when it implemented the mandate following the change of strategy.

Given the correlation between the asset breakdown in the illustrative portfolio document and Mr and Mrs G's portfolio statement around this time, I think it's likely the strategy change led the portfolio being made up of approximately:

- Equities – 30%
- Bonds – 27%
- Alternatives – 40%
- Cash – 3%

On the face of it the "Alternatives" category would look high for those with the stated risk tolerance Mr and Mrs G have. But looking within the illustrative portfolio, these assets are split approximately 50/50 between those with a risk exposure I think suitable for Mr and Mrs G and the other half with an increased risk exposure. In practice then what Mr and Mrs G likely had was a portfolio of about 75% in more typical investments and a 25% exposure to more non-mainstream assets, with that minor holding averaging around a middle ground risk exposure.

It's finely balanced but in my view the portfolio strategy recommended in 2018 would be suitable for Mr and Mrs G. I say this because the allocation on balance, in my view, was within their risk tolerance.

There is an argument here that perhaps overall the risk exposure on the face of it would traditionally be a little bit higher than the description Mr and Mrs G likely saw. But I note that UBP's risk categories are individually quite wide, for example for low-medium is says approximately 25% will be invested in equities, and for medium, 50%. But also that disclosure also says assets such as hedge funds, structured notes and commodity funds would be used for exposure, those very assets which were included within the "alternatives" category. While the equity component was around 5% higher than the risk information provided said, I don't find that would render the advice unsuitable. I say this because those

are illustrative figures and the actual investment amount in practice will be around that figure rather than being strictly tied to it, which overall UBP explained in its definitions.

Overall, given that and along with Mr and Mrs G's objectives, circumstances and experience I think they would be willing to take a bit more risk to meet their objectives if the exposure were a bit higher than UBP had communicated. In my view the risk exposure was in line with what UBP disclosed within its low-medium range, likely at the higher end of that but still within it.

Mr and Mrs G include in their complaint that they weren't reasonably informed of the risks involved with this change. Having read the documents I can't fairly say that I agree. As I'm mentioned above, UBP did in my view clearly explain the sort of assets involved and included in the recommendation report, which Mr and Mrs G have signed, detail about each asset and some key risks of each. There are also several mentions of there being discussions about the risks of this strategy.

It follows then I'm satisfied the advice to change strategy in 2018 was suitable in the recommendation itself and how the mandate was implemented through the discretionary arrangements in place. And, that the risks had been fairly explained.

2023

In Autumn 2023 UBP advised once more that Mr and Mrs G change strategy. This was following a discussion where UBP were again concerned about the impact of economic conditions on the portfolio, and Mr and Mrs G wanting to reduce their risk and volatility exposure over the next 12 to 18 months. Outside of the future volatility concerns Mr and Mrs G's circumstances were largely unchanged, as far as relevance to their portfolio suitability, and continued to have the same income requirements.

The change UBP advised this time was to reduce their risk level to UBP's "Low" profile, the second of five, and switch from the CPI+3% strategy to investing in its "Short Term UK Government Bonds" Strategy, again under a discretionary management arrangement. The "low" risk profile was defined at the time as being, *"Your priority is to produce income whilst seeking to preserve your capital. You invest primarily in bonds, with a recommended time horizon of two years"*. UBP defined the strategy itself, in the suitability letter it sent afterwards, as:

*"The primary investment objective of the Short Duration UK Government Bonds Strategy is to deliver a gross return similar to deposit rates and with minimal credit risk, through a combination of capital gain and limited income. The strategy is implemented in a tax-efficient manner such that the after-tax return for UK taxpayers will exceed that available from deposit rates. Investors in the strategy should be willing to accept a low level of risk similar to the long run historical risk of investing in a portfolio of 100% short duration UK government bonds."*

The suitability letter then explains given that returns on these assets would more likely be around 4 to 5% for the holding duration, earned through the coupons and the maturity value for those bonds held to term. The general idea being then to increase the certainty of returns while reducing the market risk exposure to equities and other types of bonds and assets, for the next year or so. The short-dated style of this would likely be able to provide stable returns but with more resilience the resale value against increasing rates than compared to longer held 'gilts'. UBP explained that the returns were aiming to exceed deposit rates but with volatility and risk mitigated by using short-dated gilts. In my view then given the concerns of UBP, and the change in risk tolerance of Mr and Mrs G, I'm satisfied the

strategy was on balance a suitable recommendation in the circumstances where it would meet their objectives and would be within their risk tolerance and experience.

Having read the recommendation report, I'm also satisfied UBP set out the risks of this approach and had also explained that when it gave this advice. I say this because in the "Our Investment Recommendation" section, it says as follows:

*"We have discussed the risk of switching to Short Term Duration UK Government Bonds strategy from the current Target Return CPI + 3% strategy you are invested in. The risk is that if the equity markets go up suddenly, the current strategy (Target Return CPI + 3%) will perform better, if [The Bank of England] lowers the interest rates, the new portfolio strategy performance is likely to suffer. Currently the equity part is only 25% therefore we will not benefit if that markets suddenly go up. We have discussed the current market view of [UBP] we do not expect BOE to lower the rates immediately, but it might happen in the next 12-18 months."*

I'm satisfied from, at the least, what I've seen above, the key risks of this change were explained to Mr and Mrs G. The most key being Mr and Mrs G would be in effect out of the markets so they would lose out on any performance in asset improvement from those assets when no longer held, and that returns would be restricted to return income and capital value of the bonds invested in. It follows I'm satisfied that UBP explained the overall risks of this change to Mr and Mrs G in a sufficiently clear manner.

Given the recommended strategy was also suitable for them, and like 2018, I'm satisfied UBP had also set out the risks with sufficient clarity. It follows then while I understand why Mr and Mrs G feel the way they do, I'm not persuaded UBP treated them unfairly.

### Performance

I wouldn't be able to uphold a complaint based on concerns about performance alone, this is because that often derives from the changes in the underlying markets and wider economic circumstances. It can also however stem from factors within UBP's control, such as the advice it gave or how it implemented the mandate, which as I've explained above I've found the firm acted fairly in both regards.

There have been a number of significant market events in recent years which likely affected the performance of Mr and Mrs G's portfolio given how it was invested over the years. Events such as the pandemic, conflicts, rising interest rates and inflation would impact the sorts of assets Mr and Mrs G held at those times. I also note they've taken withdrawals of almost £200,000 across 2016 to 2023 which was intended from the outset, but would limit the growth opportunities of the portfolio given any gains or loss at the time of those withdrawals becomes crystallised and can benefit no more from any positive movements in the portfolio. Ideally the growth would've served those income payments without detriment to the growth aims. But as I've mentioned, that would be dependent on the market and not a reason in isolation for me to fairly uphold the complaint. Taking into account the amount invested and the withdrawals the overall portfolio grew almost £100,000 from inception until closure.

Mr and Mrs G's view is that the portfolio was in effect supposed to pay itself off by growing enough to meet their needs and to be able to settle the original mortgage. But from the documentation I've seen I've not seen that was either an objective or something UBP guaranteed.

I say this because the “credit application” for the mortgage taken out around the same time the portfolio was advised says the following:

“Purpose [(of the mortgage)]:

Provide a £1,066,000 Mortgage on [Property A] as an equity release to invest in a £1.06m (...) offshore investment bond. [Mr and Mrs G] have already purchased this property at the beginning of July 2015.

(...)

Repayment

The agreed interest-only repayment strategy will be from the sale of [Property B]. [Property B] was purchased for €3.5m, the client is breaking down most of it and refurbishing it for an additional €1.5m. The expected sale proceeds are between €8.5m and €9m (external surveyor confirmation attached). The renovation of [Property B] has started and [sale] is expected in 12 months to 18 months time.”

UBP further recorded in an internal email about approving the mortgage that:

- “The agreed interest-only repayment strategy will be from the sale of [Property B] being refurbished in [Country]. The expected sale proceeds are between €8.5m and €9m.
- The applicable fees and costs were also discussed.”

In my view then UBP provided no guarantee, or intended that, the portfolio would perform in the way Mr and Mrs G recall, that it would grow enough to meet their income needs and repay the mortgage capital and interest. That repayment in my view has been evidenced as being expected to come from another capital source, such as profits from their business activities, and not the portfolio itself.

Summary

It follows I can't fairly conclude that Mr and Mrs G's performance concerns were unfairly caused by UBP, in particular the advice it gave or the implementation of that. Nor am I persuaded that Mr and Mrs G were told the portfolio performance would allow them to repay the mortgage taken to invest in this portfolio.

**My final decision**

For the reasons given above, I don't uphold Mr and Mrs G's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G and Mrs G to accept or reject my decision before 9 April 2026.

Ken Roberts

**Ombudsman**