

The complaint

Mr K has complained that Brooks Macdonald Asset Management Limited ('BMAM') held an investment that was too high risk in his discretionary managed portfolio.

What happened

The background to this complaint is well known to both parties and was clearly set out in the previous jurisdiction decision that was issued in July 2025. So I don't intend to repeat the background in full here. Instead I'll provide a summary of what I consider key to my decision.

Mr K had invested through BMAM's Bespoke Discretionary Portfolio Service for a number of years. In 2013 he signed an "*Investment Mandate Confirmation*" form. This confirmed Mr K's investment objectives as "Income & Growth" and it categorised him as risk level "2". The form described risk level 2 as:

"2. Low to medium risk:

A cautious portfolio that will give exposure to a balanced range of UK and international investments with the aim of maintaining capital in the shorter term, while benefitting from the higher returns of real and market investments in the longer term. Equity exposure is likely to range between 40–60%"

In 2024, while transferring his portfolio away from BMAM, Mr K noticed that the value of one of his investments, which I'll refer to as D, had reduced to £nil. After conducting some research into D Mr K complained to BMAM as he thought it was outside the level of risk he felt his discretionary mandate with BMAM allowed.

BMAM didn't review the complaint because it felt Mr K had complained too late under the rules that apply. Mr K didn't accept this so he referred the matter to this Service for an independent review.

It was decided by another ombudsman that the complaint had been made in time and was one this Service could consider. So one of our Investigators went on to review the merits of the complaint. The Investigator didn't think BMAM had treated Mr K unfairly so they didn't uphold the complaint. In summary, the Investigator said this was because although D may not have reflected Mr K's risk profile, it formed a small portion of the portfolio, which was broadly managed by BMAM as per the mandate agreed.

Mr K didn't agree with the Investigator's opinion as he couldn't see how an investment with the risk profile of D could ever form part of a low-to-medium risk portfolio. He said the risk of failure was so considerable that it could not be "averaged" away by its inclusion with lower risk investments. Mr K also provided a copy of D's prospectus and highlighted that this said the investment was for "*sophisticated*" investors only.

The Investigator reviewed Mr K's additional comments but remained of the opinion that BMAM had acted reasonably in managing the portfolio as a '*low to medium*' profile. And they

didn't think BMAM had been responsible for the initial selection of Mr K's risk level. The Investigator also said the portfolio could include some high-risk and low-risk investments.

And although the prospectus said that D was to be "*primarily marketed to institutional and sophisticated investors*", this was not in reference to when the asset had been listed in the secondary market, as it was in Mr K's case. Once listed, it could be owned by retail clients such as Mr K through a discretionary portfolio.

Mr K maintains that D should not have been held in his low to medium risk portfolio so the complaint has been passed to me to reach a final decision.

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.

My role is to consider the evidence presented by Mr K and BMAM in order to reach an independent, fair and reasonable decision based on the facts of the case. In deciding what's fair and reasonable, I must consider the relevant law, regulation and best industry practice. And, having done so, I'm not upholding Mr K's complaint and it's largely for the same reasons that our Investigator has set out - I'll explain why below.

It's important that, when considering D, I take account of the suitability of the portfolio as a whole. It's generally acceptable, for example, that a high-risk investment can be included in a low-risk portfolio, provided there is an appropriate mix of investments which means the overall risk of the portfolio is suitable.

In February 2013, £6,650 was invested in D. I've not been provided with any Investment Reports for the year D was purchased. However, I can see from an Investment Report in early 2014, the investment in D represented less than 2% of the total value of the portfolio; a very small percentage of the overall portfolio value. And I'm satisfied this would have been the same the year D was purchased. So while D was a high risk investment, this would have been balanced out by the other funds within the portfolio. And as I've said above, when assessing the level of risk of a portfolio it is only right to look at the portfolio as a whole.

The portfolio was well-diversified and the split of investments was broadly in line with the guidance portfolio. And it remained this way throughout the period that Mr K was invested with BMAM.

I know Mr K has concerns that the prospectus said D was primarily suitable for institutional or sophisticated investors. As the Investigator explained, this statement referred to the initial marketing and allocation process and not to the ongoing eligibility to hold the shares. Once admitted to trading, D was a listed Real Estate Investment Trust and was available on the secondary market, and retail clients could own it through a discretionary portfolio.

Mr K delegated responsibility to BMAM for selecting a suitable portfolio for him, and in turn BMAM were responsible for managing those monies. That gave BMAM license to invest Mr K's monies as it saw fit within the confines of the risk mandate that he'd agreed to. In short, that meant BMAM's fund managers were free to select investments for the portfolio which in their professional opinion, would meet the objectives of the fund. BMAM wasn't required to seek prior approval from Mr K about any proposed investment purchases (or sale decisions) and it wasn't required to keep him abreast of the individual performance of various assets within the fund. BMAM was however required to keep Mr K informed about how the portfolio overall was performing and it did that by providing him with regular Investment Reports.

During a call with this Service Mr K said that it may have been that an investment in a lower risk fund may have produced a better return. That may well be the case. However, I am also aware that Mr K received a positive return on D of around 15%. In any event, underperformance in itself doesn't necessarily mean that the investment manager has done anything wrong. And provided the investment manager has invested the portfolio in line with risk profile and investment objectives – which I'm satisfied it did in this case - then that underperformance is a reflection of the investment manager carrying out their role in exercising judgment which may or may not lead to a better or worse outcome than the benchmark. Underperformance in itself isn't a reason to uphold a complaint.

I appreciate Mr K feels strongly about this matter but I've not found that BMAM acted outside of the agreed investment mandate. So I'm not upholding his complaint.

My final decision

For the reasons explained above, I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 10 April 2026.

Lorna Goulding
Ombudsman