

The complaint

Mr and Mrs W complain failures by UBS AG (“UBS”) in its advice on and its management of funds they held and invested in UBS AG’s Systematic Allocation Portfolio (“SAP”) caused financial loss and they seek redress.

Mr and Mrs W point out numerous reviews by UBS didn’t identify their allocation to SAP wasn’t in line with UBS’s own guidelines – so they complain UBS failed in its supervision and oversight of its adviser and their UBS accounts.

They also complain of clear failings at the SAP product level, as they say the product failed to reduce the impact of market drawdowns in the way UBS led them to expect.

As redress Mr and Mrs W seek the return of management fees that UBS charged - which for their personal accounts amounted to £36,986 during the period – and they seek interest at 8% on this.

Background and circumstances

I wrote to the parties with provisional views on the complaint. In summary, I invited UBS to consider offering to pay Mr and Mrs W £11,100 to settle this complaint, plus simple interest on this sum at 8% from 1 April 2023. I set out this proposal in terms including the following:

background

Mr and Mrs W’s complaint arose after UBS sent them an offer of redress for the SAP investment. This was on the basis that UBS’s internal guidance was for the SAP product to be usually used as a satellite or diversifying element within a market exposed portfolio rather than as the core product and strategy.

The reasons for this guidance haven’t been articulated really, but I imagine these arise from SAP having a market timing or trend following approach triggered by particular indicators – with the risk, carried by all such approaches, that this might fail and result in negative rather than positive divergence from overall market performance. In essence, a risk that the consumer might miss out on the market returns from the market in which they were invested. It is a risk – like that of the risk of a particular manager underperforming - that might be mitigated by diversification across approaches or managers.

Such approaches might fail for reasons idiosyncratic to the composition of the indicators or because market trends arising differ in kind from past trends for which approaches are designed and against which they were tested. I gather in this case it was initially the latter.

In summary, this was initially due to the equity market experiencing a fall large enough to trigger a SAP rebalancing towards safer assets (bonds), but equities then recovered much more rapidly than in past downturns (this was the post lockdown recovery) – so left the SAP effectively crystallising losses on the downside and missing out on gains achieved on the upside. As a result, the SAP approach underperformed a more ‘buy and hold’ approach and the market return generally.

There followed a period of inflation and rising interest rates in which bonds fell in value mechanically (due to rate rises) and significantly – but equities fell too (perhaps due in part to investors selling equities to buy bonds to rebalance portfolios). This latter period would have worked against strategies which assume a falling equity market will assist bonds (which was a popular approach historically). It should be noted with hindsight this ended, at least for a time, a historic period of low and falling interest rates. So approaches modelled on past market behaviour were likely to have trouble.

The period of falling bond prices was also significant here because Mr and Mrs W's concern with the losses they had suffered meant they switched into the traditionally safer SAP defensive strategy, which carried more bonds, and suffered significant losses there. Also it was equities rather than bonds that then recovered subsequently, so those who pivoted towards bonds suffered larger losses.

So it appears SAP's market timing, trend following and portfolio rebalancing efforts in this period on the whole led SAP to underperform the market significantly. As such UBS's offer was designed to put Mr and Mrs W into the position they would've been in if they had taken only 30% of their SAP position and placed the rest into a fund that would hold a broadly similar but more consistent asset mix with less tactical variation – and so give Mr and Mrs W a return more consistent with the general market return of the period. In effect UBS's offer to Mr and Mrs W – in very broad terms – was a market return, or what UBS achieved from the market over the period through a more tactically neutral approach (and varied over time for the changes in Mr and Mrs W's risk appetite over the period).

scope of the complaint

I've set out above the broad background to the dispute. UBS emphasises that the complaint arose after it made its redress offer to Mr and Mrs W – at which time Mr and Mrs W had already left UBS. So UBS's view is that our enquiries here should really be confined to the question of whether its redress reflects a fair approach to resolving the specific issue it was seeking to remedy when it made its redress offer – namely overallocation to one tactical market timing approach. In support of its argument that the redress is fair on those terms, it points to the fact that it has alerted regulators to its approach and has involved a third party lawyer in assessing its fairness.

But while the complaint did arise after UBS made its offer, that is not the whole story. It is apparent Mr and Mrs W were dissatisfied with the performance of the SAP strategy over its course – and held a number of meetings with UBS, and a variety of experts within UBS, in an effort to address their concerns. The fact they shifted strategy after a time – to a more defensive one – illustrates this concern. It is also illustrated by the fact they later switched into the OIEC – apparently on the basis that this would allow quicker participation in a rising equity market than the SAP would have done. So these changes and meetings reflect that there was concern and dissatisfaction on Mr and Mrs W's part before UBS's redress offer arrived. It is not the case that their concerns were purely engendered by that offer or that there were no concerns from them before that.

So I don't agree that my role here is just to check whether UBS's redress method is a fair way to remedy the specific problem UBS identified. On one hand that is too broad a remit - as it ultimately would be to judge UBS's redress approach to this issue in general, and I'm not convinced that is something I need to do here to reach a fair outcome (also I'm not sure I have the detail from UBS about its approach to do that here).

That said, what I've seen gives me no reason to suppose UBS's approach - either in terms of the proportion it said shouldn't go into SAP, and so should be redressed, or its choice of

the OIEC as the comparator - was designed to unfairly deprive Mr and Mrs W of redress. Indeed, it was UBS that initiated the process and decided there should be redress. The use of a third-party lawyer of course doesn't mean the approach is bound to be fair, but I agree it does add some weight to the view – which I think is reasonable here – that UBS's redress offer reflects an approach which is a genuine attempt to determine fair redress for the particular issue or flaw it identified here.

But looking exclusively at the fairness of UBS's approach on its own terms would, on the other hand, also be too narrow a remit, as it would ignore the particular issues and concerns Mr and Mrs W had about SAP. So I move to consider whether the offer is fair in light of those concerns – and fair and reasonable in all the circumstances here. I've made a few observations below.

discussion

To award redress, I need to be satisfied UBS did something wrong. Its own view was a maximum allocation to SAP should be 30%. But this doesn't mean a higher allocation must have been unsuitable for Mr and Mrs W or must amount to a fault or breach of rules of a kind that would allow me to award redress. I've thought carefully about this.

I'm not persuaded by Mr and Mrs W's argument that the SAP product was fundamentally flawed - or misrepresented by UBS. I don't see that UBS promised the tactical market timing mechanisms of the SAP were bound to guarantee better returns. I think it would've been apparent moving out of equities carries the risk of moving too late and not moving back soon enough – and that emphasising equities during an uptrend carries the risk of higher losses if the market rapidly reverses. I'm persuaded by the explanations given by UBS as to why the SAP underperformed its OEIC. Investment conditions in the period were different to those that had occurred historically, in ways I've touched upon above. So I've no reason on the face of it to suppose the SAP product failed. Rather the events that occurred during the investment term were different in kind from past events against which SAP had been back-tested and succeeded (I refer here to the examples UBS gave such as the 2007/8 crisis).

So although it didn't in fact work as planned, I don't see that the SAP was flawed in itself. That said, a risk of a large SAP allocation was that one might miss out having the investment exposed to part of a positive market move if the tactical allocations don't work out. But I note Mr and Mrs W have been clear that they were reluctant to invest in the market without some sort of hedge or mechanism that might mitigate market risk – and in fact would've been willing to give up on exposure to the market – for at least some of their money - if there hadn't been some sort of risk 'dampening' strategy or mechanism. On that basis it might be said that they were more suited than most to a high allocation to SAP – and that the redress UBS offered was already generous in Mr and Mrs W's case.

But having said this, Mr and Mrs W's wish to use SAP was more to mitigate market risk than to increase or maximise returns. They seem to have been looking more for protection on the downside than a potential to outperform in positive markets. As such their choice of SAP – and their choice to invest in SAP so much of what they did invest – was driven to a degree by caution. What was emphasised and attractive to them was the potential for SAP to reduced drawdowns. But SAP couldn't of course guarantee to reduce drawdowns and had the potential to exacerbate the losses arising from a drawdown. It isn't obvious to me that this latter aspect was given sufficient weight in Mr and Mrs W's decision. Overall it seems to me that UBS is right to approach this situation on the basis that there was overallocation to SAP and that this was the result of a failing and so redress is due for that overallocation. I note in passing that although it did offer a small allocation to alternative assets, SAP wasn't an absolute return strategy or suited to those seeking such a strategy – it didn't aim for capital preservation or an all weather positive return, but rather an enhanced market return.

In my view – and in light of all I’ve already said above - UBS’s offer, and comparison with its own OEIC, can be viewed as a decent starting point for addressing a loss arising from underperformance attributable to overreliance on one particular strategy, when compared to the market in general. But there are issues with this as the answer here for Mr and Mrs W.

The first issue is that the UBS OEIC wasn’t entirely strategically and tactically neutral - it wasn’t a mere tracker fund designed to follow broad market indices. So it isn’t a wholly neutral representation of market returns over the period, but reflects UBS’s market views over the period to an extent.

The second, related, issue with using this as a measure in this case is that Mr and Mrs W say the OEIC was underperforming when they first invested and something they specifically rejected at the time. I don’t have evidence from the time to conclude that this is so, but what I have in terms of evidence and notes from the period is limited so far (due I suppose to UBS’s view of the limited nature of the enquiries it considers I should undertake). But for present purposes I see no reason to not accept what Mr and Mrs W say about this. After all, there was the option for them to invest in the OEIC at the outset, and they did not do so. So it seems the OEIC was at the very least less appealing to them than SAP at the start. I do note that they did invest in the OEIC much later, and this does undermine to an extent the weight of the suggestion that the OEIC was entirely unacceptable to them, but I acknowledge that this was done later in light of losses and a relationship with UBS that was established – so it by no means follows that this means Mr and Mrs B are wrong to say they wouldn’t have agreed to invest in the OEIC at the start and would instead have done something else.

The third issue with UBS’s measure - which I characterise here as a broad market return, allowing for the caveat’s I’ve already made above – is that Mr and Mrs W say they would never have agreed to invest in the market generally what they invested in SAP, due to concern about loss of capital in general. So even if the OEIC was a good proxy for a general market return at Mr and Mrs W’s chosen risk levels, it wouldn’t reflect what Mr and Mrs W might have got back if they hadn’t invested 70% of what they did in the OEIC, because they would never have invested that sum in the market in that way anyway. It seems to me that there is some weight in this suggestion. The adoption by Mr and Mrs W of the SAP approach does seem to me to have been motivated in part by a reluctance to fully expose their funds to market returns in a conventional way – given that these were large sums they had only just realised, and they were unused to making such large investments. The idea the SAP might take some tactical measures to dampen volatility and reduce potential losses, is an idea that it seems to me did play a part in Mr and Mrs W being willing to invest what they did in the SAP. I’m inclined to be persuaded by them when they say that if the SAP had not been offered to them, or the sum they could put into it had been limited, they might have done something entirely different with their money or the rest of their money.

So for all these reasons, it does seem to me that using the return on the OEIC, when it may be not only an investment but also an investment style that Mr and Mrs W would specifically have rejected and been unwilling to take, is a limitation when it comes to using the OEIC to attempt to measure the loss Mr and Mrs W suffered here.

Our investigator suggested a comparator index designed to reflect a broad market return should be used to measure Mr and Mrs W’s loss instead. But this also has the shortcoming that it reflects a broad market portfolio return when Mr and Mrs W say they would not have wished to take that sort of approach without the reassurance of the possibility of the tactical ‘dampening’ of volatility that they perceived the SAP could offer. So insofar as Mr and Mrs W wouldn’t have invested in the SAP, comparing their return with a return from a comparator to reflect a broad market return, doesn’t seem to me to do a much better job of reflecting where

Mr and Mrs W might have found themselves.

I've reflected on the fact that if Mr and Mrs W had responded to the absence of the tactical reassurance of SAP by investing less in the markets, they would've lost less (on the basis that they wouldn't have lost money if it was kept in cash) and so in effect got a better return than both SAP and the OEIC comparators. On the other hand, had they responded by investing more into bonds, to lower risk and volatility, the result over the period being considered here could have been worse than SAP and the OEIC comparators.

Mr and Mrs W have suggested they would have explored alternative strategies. Had they done so, they might have done better or worse than the OEIC, depending on the strategy. So this doesn't take me much further. There is also the point that Mr and Mrs W did change the approach when it wasn't working out, so any alternative strategy might have been similarly altered. In short, I don't think it realistic to model a return based on an alternative strategy. In saying this I include cash as an alternative strategy. I'm not convinced that a return based on cash would better reflect what Mr and Mrs W might have done had they invested less in SAP. In saying this I note Mr and Mrs W didn't just agree to invest in SAP once. They agreed to add more over time and continue with it later when they changed risk strategy to a more defensive SAP approach. With this in mind it seems reasonable to me to suppose that although alternative strategies Mr and Mrs W might have pursued might have done better than SAP, they may have still lost money over the period here.

summary and conclusions

I accept that it is likely Mr and Mrs W would've done something other than invest in the OEIC as a core portfolio, and so their return would likely have been different to the OEIC return. But the OEIC return still offers a reasonable starting point for calculating Mr and Mrs W's potential return (had they not invested what they did in SAP). UBS offered this redress of its own volition, and in my view I shouldn't rush to interfere if a fair and reasonable answer has already been proposed by one of the parties. I note the absence of a simple or compelling alternative measure – and that Mr and Mrs W's complaint form accepts the opportunity cost of investing in SAP can't be calculated definitively. They accepted the OEIC return as a starting point, but wanted an enhanced figure given its limitations in their case.

I've noted above why I agree the OEIC measure has limitations in all the circumstances here. It is also the case that Mr and Mrs W were denied the chance to try other investments they might have tried - and so lost the chance of doing better than the OEIC. It doesn't seem unreasonable to say this lost opportunity ought to have a positive value – and I think it fair this is reflected in the redress.

Mr and Mrs W's have suggested UBS's redress be enhanced by a refund of the management fees charged on SAP - which for their personal accounts amounted to £36,986 during the period.

In broad terms, Mr and Mrs W invested £3.5m from July 2019 to August 2020 in SAP medium – and withdrew around £74,500 less than that over the period – of which £30,500 was due to management fee deductions. So £44,000 was lost due to investment falls. UBS paid £47,000 in compensation of which £21,400 was due to not deducting from the OEIC value a 70% share of the management fees, so £25,600 was investment underperformance of the SAP investments compared to the OEIC. So of the £44,000 lost due to investment falls, the OEIC comparison returned around 60% leaving Mr and Mrs W to suffer a loss (of capital) of £18,400.

For SAP defensive, Mr and Mrs W invested £540,000 from April 2021 and got back around £33,300 less than this in March 2023 – of which £6,400 was due to management fees. So

£27,000 was lost due to investment falls. UBS paid compensation of £16,257 of which £4500 was due to not deducting from the OEIC value a 70% share of the management fees, so £11,750 was investment underperformance of the SAP investments compared to the OEIC. So of the £27,000 lost due to investment falls, the OEIC comparison returned around 45% leaving Mr and Mrs W to suffer a loss (of capital) of £15,300.

So of the capital losses of £71,000 suffered, Mr and Mrs W were returned around £37,300 and left to suffer a loss (of capital) of £33,700.

Mr and Mrs W seek a return of all management fees, totalling around £37,000. An award along those lines would return Mr and Mrs W's capital loss above entirely. I'm not sure that is fair. On the other hand, returning the 30% of the fees, which are the fees not taken into account in the redress comparison, would mean a refund of around £11,100, or about one third of the absolute loss outstanding. In my view it is perfectly plausible that by investing less or pursuing a different investment strategy, Mr and Mrs W might have reduce the loss suffered on the above investments by £11,100. So I find that this would be a reasonable sum to award, to reflect the possible extra return Mr and Mrs W, if given the chance, might have made over and above the OEIC return had they not invested as much as they did in the SAP. So I'm inclined to suggest UBS pay Mr and Mrs W £11,100 plus simple interest at 8% from 1 April 2023 (the date the SAP investment ended) until the date the redress is paid.

I acknowledge that this proposal and my calculations are broad brush in nature. But ultimately the actual return and outcome is unknown given the uncertainty surrounding the precise course of action Mr and Mrs W might have taken had they not invested in SAP. I also accept the sum I propose is not that much more than what UBS has paid already. But I think this additional sum is fair in all the circumstances. I say this bearing in mind it means Mr and Mrs W will still suffer part of the capital loss that arose from the SAP, but I think a share in some of the loss is fair. With all this in mind, I do think my proposal is a fair way to address the fact Mr and Mrs W put too much into the SAP strategy but might have suffered losses elsewhere but perhaps less than those suffered by the OEIC. I note that the figures for loss and redress above, ignore the net interest paid by UBS already of around £13,000. I should acknowledge also that my proposals here, and this complaint, considers only sums invested in Mr and Mrs W's names personally.

- End of proposal text

responses to my proposal

UBS's response said, in summary, that as a 30% allocation to SAP wasn't unsuitable, fundamentally flawed or misrepresented, UBS should be entitled to charge fees for it. So it didn't agree it should reimburse 30% of its SAP fees, noting it had already returned 70%.

However, while it didn't agree with the rationale I had proposed for the refund, and wanting to resolve matters pragmatically and without prejudice, it was prepared to offer a goodwill payment of £13,500 to Mr and Mrs W without admission of liability. This reflected a top up on the investment opportunity return which I had considered Mr and Mrs W had foregone.

Mr and Mrs W's response included, in summary:

- SAP wasn't fit for the defensive purpose it was being used for, or appropriate for clients like them whose primary aim was to preserve capital in a highly uncertain environment. There was a significant gap in how the product was tested for the type of environment it was expected to perform in, given how it was presented to them as a defensive solution. UBS pointed to the 2007 financial crisis which was driven largely by liquidity constraints. But SAP wasn't stress-tested for the inflationary and rate-driven conditions in 2022.

- They were recommended to invest more in SAP than was normally recommended under UBS's own suitability standards. So the outcome shouldn't be seen simply as the result of market movements, but also of the advice that led them to that position. This is important when considering responsibility and redress.
- Their behaviour shows they consistently prioritised capital preservation. They declined the OEIC as it didn't match their risk tolerance or objectives. Their preference was to remain in cash, particularly as they already had exposure to higher-risk investments elsewhere through angel and LP holdings. UBS recommended increased exposure to SAP as a safe-haven suited to the exceptionally volatile conditions of the time.
- They invested in the OEIC only after losing confidence in SAP's ability to recover – and after UBS advised using the OEIC to participate more effectively in the recovery underway. It was a practical step, not their preferred strategy. They left UBS altogether shortly after, as they lacked confidence in the approach. The sequence shows they acted in reliance on UBS's advice, rather than on investment preferences of their own.
- The choice of comparator isn't just a technical detail but central to reaching a fair result. If it doesn't reflect what they would realistically have done, it inevitably affects the assessment of both loss and responsibility. Any remaining uncertainty about the counterfactual should be resolved in a way that reflects their consistent preference for capital preservation and the extent to which their SAP exposure resulted from advice, not their own initiative.
- It is difficult to reconcile the fact that UBS had internal guidance limiting a client's maximum exposure to SAP, but for comparator purposes there appears to be no equivalent limit to a client's exposure to the OEIC. This OEIC comparator also risks significantly understating their loss as it doesn't reflect the capital-preservation outcome they were seeking or the position they would realistically have adopted.
- They had no experience of investing in bonds or gilts and wouldn't realistically have moved into unfamiliar instruments during a period of market instability. The evidence suggests cash is the most realistic comparator to assess loss. It reflects where they actually were before entering SAP, the position they repeatedly indicated to UBS they would've preferred during the period and how they continued to hold their capital after leaving UBS.
- If the OEIC is retained as a comparator for practical modelling purposes, although it doesn't reflect what they would actually have done, it would be fair and appropriate to reimburse all management fees and other structural costs, to reflect that the OEIC likely understates the loss compared with a more realistic cash alternative. Even full repayment of management fees wouldn't address the actual capital losses they experienced or the opportunity cost of not remaining in cash. It is also relevant that if their capital had remained in cash – the most realistic alternative - no management fees would have arisen at all.

As the matter remains unresolved, it has been passed back to me for a final decision and I have reconsidered it with the above points in mind.

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 arrived at broadly the same conclusion as I proposed to the parties.

UBS has objected to my conclusions in principle, but it has agreed to offer a sum broadly in line with the sum I proposed (once the interest I proposed is allowed for). With that in mind, I've decided it is fair to award the sum UBS has offered. So I note UBS's objections to my original proposal, but I won't discuss those further here.

Turning to Mr and Mrs W's points, I still don't agree a cash return would be fairest. I say this bearing in mind Mr and Mrs W were willing to place their sum in an investment with market exposure. There was a mechanism whereby the negative impact of this exposure might be reduced, if what happened in future matched certain historical precedents. But there was no guarantee of this – and some market impact was nevertheless to be expected even if the dampening effect worked. This effect didn't work as planned due to investment conditions differing from those for which it would've worked – but I don't agree this means the SAP was flawed. Also I'm not persuaded UBS gave or Mr and Mrs W were swayed by any guarantee that the intended results would be achieved by the SAP strategy.

I acknowledge Mr and Mrs W's investment purpose wasn't to seek the greatest returns consistent with their risk attitude, but rather to maintain the value of their funds over time given the possibility of inflation, the long potential investment horizon and the extent to which the sum might be used to assist other family members. But I don't see that their investment behaviour prioritised capital preservation absolutely.

So in my view a return that insulated Mr and Mrs W entirely from losses on the portion of their portfolio that is being redressed here – providing also a positive return reflective of a cash interest return on that part, would not be fair. I say this acknowledging that in that situation Mr and Mrs W would still bear the loss on the part of their portfolio not being redressed – but in my view such a loss is fair on that element given I've not found the investment of that element to be flawed.

Mr and Mrs W have made elegant arguments in favour of a full refund of management fees – for example as an adjustment to the OEIC comparator. But I'm not persuaded a full refund of fees, and the degree of recovery of lost capital it would imply, is fairer than what I proposed. In saying this I don't overlook that UBS is at fault here for advising Mr and Mrs W to put too much into SAP funds, and that in doing so Mr and Mrs W followed UBS's advice rather than an idea or preference of their own devising. But I still think it fair for redress to reflect that they may have suffered losses elsewhere but less than those of the OEIC. Had they put more in bonds, they may have lost more than with SAP, but I accept their points on that.

Mr and Mrs W have requested, but UBS hasn't provided, calculations or spreadsheets to support the result of its original OEIC comparison redress. It has provided only a summary of the outputs of these, which I relied on above and which I have shared with Mr and Mrs W. I've not seen grounds to suppose UBS was unable to calculate its redress properly, so I proceed on the basis that it has already paid Mr and Mrs W the difference between what they received back from 70% of their SAP investment and what they would've received from the equivalent OEIC investment instead. The redress I award here is therefore a sum on top of that earlier redress, as an enhancement to it, as explained above.

So, for the reasons I've given, my view is it is fair and reasonable for UBS to pay £13,500 to Mr and Mrs W in settlement of this complaint, representing an enhancement to the result of its OEIC comparison – an enhancement that returns some but not all the capital loss not returned by that original comparison.

So on that basis I uphold this complaint.

Putting things right

I uphold Mr and Mrs W's complaint.

UBS AG should put things right by paying Mr and Mrs W £13500.

UBS AG should pay the redress within 28 days of being notified by us of Mr and Mrs W's acceptance of my decision. If UBS AG doesn't pay the redress within that time, it must add simple interest to the redress at a gross rate of 8% per year from the date of my decision to the date the redress is paid.

My final decision

For the reasons I've given, and in light of what I've said above, I uphold this complaint.

UBS AG must put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W and Mr W to accept or reject my decision before 25 March 2026.

Richard Sheridan
Ombudsman