

complaint

Mr M complains about Ruffer LLP ("Ruffer"). He says he was given wrong and misleading information about investing in the Ruffer Illiquid Strategies Fund 2011. He is now unable to sell the investment, or to transfer it to another provider.

background

Our adjudicator investigated the complaint, but didn't think it should succeed. He noted the investment had been made by Ruffer under a discretionary management agreement. This gave Ruffer a very wide mandate in what investments to make. Also, Ruffer wrote to Mr M in 2011 explaining it intended to add the Illiquid Strategies fund to his portfolio, and included details of this investment. Mr M confirmed he wished to restrict the investment to 5% of his portfolio.

The adjudicator noted that Mr M had instructed Ruffer to sell his portfolio, including the Illiquid Strategies fund, in March 2015. He wanted to move his capital to another provider. But because there weren't enough matched buyers for the fund, this wasn't possible. Ruffer had proposed a method by which this could be achieved, which the adjudicator thought was reasonable.

Mr M didn't agree with the adjudicator's view. In summary, he said:

- He'd not given an instruction to transfer the Illiquid Strategies Fund in March 2015 as he'd done his homework and found this option was not available to him.
- So a sale instruction was the only option to transfer the holding.
- Ruffer doesn't have the authority under the discretionary management agreement to invest in an illiquid investment unless agreed with the client.
- In March 2011 Ruffer sent him a four-page Q&A document. But it didn't do this in respect of a similar investment in 2015. He didn't agree to invest in that fund.
- The Q&A document contains information about what happens if a client wants to leave the investment. This says the shares can be sold on a matched basis, or the fund transferred to another custodian or into the client's name.
- But neither option is available. He is not currently able to sell the investment, and he has not found another provider willing to accept the transfer.
- Ruffer made the representation in the Q&A document, and relied on this for the sale. It should now keep to what it said.
- Also, Ruffer altered the pricing mechanism of the fund in 2015.

As it remains unresolved, the complaint has been passed to me for consideration.

my findings

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

I think there are essentially two parts to Mr M's complaint – the inclusion of the Illiquid Strategies fund in his portfolio and the problems when he later wanted to sell it. I will deal with these in order.

In December 2010, Mr M entered into an agreement that Ruffer would provide discretionary management of his investment portfolio. The investment management agreement gave

Ruffer very wide powers in the investments it could make on his behalf. The relevant section stated:

“Unless agreed otherwise and confirmed in writing:

- Ruffer may invest in any type of investment on behalf of the Client (this may include investing in unregulated investment schemes)*
- there shall be no restriction on the amount of any one investment or on the proportion of the Portfolio which any one investment or particular kind of investment may contribute and*
- there shall be no restrictions as to the markets on which transactions are executed.”*

The agreement also said:

“Ruffer will have total discretion without restriction as to the management of the Portfolio, subject to this Agreement, and shall have the right to retain, sell, buy, exchange or otherwise deal in investments without prior reference to or approval of the Client.”

But I note Ruffer contacted Mr M in January 2011 to make him aware of the Illiquid Strategies fund, which it was launching in March. The letter said Ruffer wanted to include this in his portfolio, taking his exposure to around 8%. But Mr M was given the opportunity of imposing an investment restriction, given the fund's illiquid nature. Enclosed with the letter were details of the new investment, in the form of a Q&A factsheet.

Mr M responded a few days later, confirming he wanted to invest in the fund with a restriction of 5% of his portfolio.

Overall, I'm satisfied the investment agreement Mr M signed gave Ruffer the power to include the Illiquid Strategies fund in his portfolio. But in any event, it also sought his agreement and complied with the restriction he required. I'm therefore unable to find Ruffer acted incorrectly in this regard.

I turn now to Mr M's wish to sell the fund in March 2015.

The information in the Q&A factsheet included what would happen if an investor wants to leave the fund. The relevant section said:

“The shares could be sold on a matched basis. Alternatively, the shares in the Fund could be transferred to another manager/custodian or into the client's name.”

I note Mr M believes this to have misrepresented the true position, but I don't agree.

It remains the case that shares can be sold. But it seems recently there has been a shortage of buyers. This is why only some of Mr M's holding has been sold so far. I appreciate this is frustrating for Mr M. But it doesn't mean the information he was given was wrong. Should more buyers come forward, it's reasonable to believe the sale could be completed.

Mr M also disputes it's possible to transfer the shares to another custodian. He said he researched the position when he decided to move his portfolio from Ruffer. But he was unable to find another provider willing to accept the shares. This is why he elected to sell the portfolio and transfer the proceeds as cash.

While I've noted the points made, I've not seen evidence of the enquiries Mr M made of other businesses. So it's not possible for me to be certain there are no other providers that will accept this fund. Ruffer has told us it has arranged transfers of this fund for some of its customers. It maintains the shares are transferable.

On the whole, I don't find the statement that shares can be transferred to be misleading. Whether or not any particular business is willing to accept the shares is a matter of its commercial judgment. This is not something over which Ruffer has any control. I don't think it would have been reasonable for it to know what view other businesses would take, possibly several years in the future, when giving details of the investment in 2011.

Mr M says that as Ruffer made the above statement in 2011, it must keep to it. But Ruffer has accepted Mr M's instruction to sell the shares, and endeavoured to do so. The ability to sell the shares at any time depends on the availability of matched buyers. I understand some shares have been sold. But I think this feature of the fund was apparent at the outset. This was why Ruffer wrote to Mr M about it in the first place.

Also, Mr M has given no instruction to transfer the fund. So Ruffer can't be said to have denied this opportunity.

Mr M has also referred to the change of the pricing mechanism for the fund. He questions Ruffer's ability to do this.

In 2011, shares would be sold at a 5% discount to the net asset value (NAV). In 2015, this was changed to selling the shares at the NAV at the pricing point. But while I've noted Mr M's comments, I can't see how this change has disadvantaged him. So I don't think it has any bearing on the outcome of his complaint.

As I've said, I can appreciate this is a very frustrating situation for Mr M. I note Ruffer has suggested a way he could arrange for the shares to be sold. If Mr M now wishes to take advantage of this option, he should contact Ruffer accordingly.

my final decision

I do not uphold the complaint and I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 15 February 2016.

Doug Mansell
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