DRN-4609867

The complaint

Mr S is a director of a company referred to as ‘Business A’ throughout the decision below.

Mr S’s self-invested personal pension (‘SIPP’) is managed on a discretionary basis by UBS AG (‘UBS’).

This complaint has been brought alongside others from additional directors and senior employees of Business A (Mr S S, Mr C S, Mr B and Mr J S) who also hold SIPPs managed on a discretionary basis by UBS, and whose complaint points are broadly identical.

Given each complainant has raised the same issues, received the same response from UBS, and provided the same evidence to this service, I make no apologies for the similarities in my decisions in these cases.

Mr S (and the other complainants) have stated that the advice provided by UBS to switch the investments within their pensions was unsuitable. They have stated the switch exposed the pension funds to unsuitably high levels of risk (concentration and currency risk) that were not sufficiently explained at outset.

Had full information and suitable advice been given Mr S has said the switch would not have been agreed and the underperformance of the new investments would have been avoided.

What happened

The relationship between Business A, its company pension scheme, and the SIPPs held by directors / senior employees commenced in 2002, when UBS began managing both the company pension and the SIPPs.

In 2015 all parties agreed that for simplicity the investments held within the individual SIPPs of directors / senior employees would mirror those of the company scheme.

The move from the original customised investment strategy (‘CMP’) to the new Sustainable Investment Strategy (‘SI portfolio’) was discussed via email in September 2020. Emails were exchanged between UBS and Mr S, who held authority over three of the SIPPs and was the conduit between UBS and the other policy holders in some aspects of the switch.

Here UBS stated that:

- *“I have had a chance to review the portfolios and I am going recommend that we change the SIPPs as per your wishes to be in line with the principle Sustainable Growth Investing Strategy.”*

- *“I am in the process of writing up my recommendation which we can review and discuss and will be in a position to start the first 25% switch once the portfolio(s) have been opened. To that end and in the interest of time we will send you the portfolio opening forms for SI Growth for the SIPPS as well.”*

- *“With regards to the performance reporting and fund breakdown of the Sustainable Growth Portfolio that we currently provide you for the Growth Portfolio, this will be available once the portfolio has been invested as it will feed into our systems.”*

In response the only issue noted was a desire to hold on to “star” fund managers within the CMP strategy until the end of the transition period. Ultimately it was agreed these “star” managers would be moved into a separate advisory account and maintained, with the remainder of the CMP strategy moved across to the new SI portfolio in tranches.

Mr S subsequently signed the UBS Discretionary Service Mandate. This stated UBS would manage the investments:

“Using our discretion in line with your investment strategy… this may result in your discretionary portfolio being implemented through regulated collective investment schemes, exchange traded funds, direct investments or any other relevant investment vehicles suitable to your investment”.

The selected investment strategy was confirmed as the UBS Sustainable Investing Growth Strategy with the form also confirming the GBP had been selected as the “reference currency” for the pension.

UBS documented the reasons for their recommendation of the SI portfolio stating:

- *“Overall, this is a UK Growth strategy. Your principle aim is to target capital growth and you can tolerate a significant level of volatility on a day to day basis. This is your pension provision, and you have no immediate requirement to access the funds. This is a diversified portfolio of cash, bonds, and equities which is actively managed by UBS. You have a long-term time horizon, being at least 10 years. You would prefer UBS to make day to day Investment decisions In line with these objectives.”*

- *“The sustainable Investing portfolio will allow you to achieve a more global and diversified approach as opposed to your current portfolio which has a UK-centric bias. Diversification Is also achieved through non-traditional holdings such as Green Bonds, as well as thematic funds.”*

- *“The UBS Sustainable Investing Portfolio targets mainly capital growth over a long-term time horizon (10 years) with a growth risk profile. The portfolio is an actively managed discretionary portfolio fully integrating Environmental, Social and Governance (ESG) factors into the investment process to provide a 100% sustainable portfolio. The portfolio encompasses a dedicated UBS Chief Investment Office (CIO) Strategic Asset Allocation (SAA) providing access to exclusive investment content, including World Bank Bonds, Green Bonds and ESG Engagement Equity Funds. Their risk/return characteristics are in line with 'traditional' mandate solutions and target a similar performance in the long run.”*

Conversations took place between Mr S and UBS in July and August 2022 regarding the pensions and investment performance, with UBS making presentations and alternative recommendations on moving some of the pension monies away from the SI portfolio.

In September 2022 a complaint was registered with UBS, with this being followed up in writing on 4 October 2022. This letter contained the complaint details for all five SIPP holders and Business A’s company scheme.

The complaint points were the same for all complainants, with the main point being that the suitability of the move to the SI portfolio was not appropriately considered, especially in relation to the increased currency risk. The complainants noted that the SI portfolio was

100% hedged back to Sterling, whilst the previous CMP model was not. The complainants stated that had this been fully explained at the time, the switch would have been rejected.

UBS issued their response to the complaint on 15 December 2022. This complaint response was written to Mr S on behalf of himself, Mr C S and Mr S S as he held authority over all three of these SIPPs. This did not uphold the complaint.

UBS concluded that the advice regarding the SI portfolio was suitable as it met the agreed objectives and risk profile. The response also noted that the hedging of the SI portfolio to Sterling had been disclosed and discussed on a call between UBS and Mr S on 4 June 2020.

Regarding the complaint about the performance of the SI portfolio UBS said that whilst the returns had been lower than expected, the investment was targeting growth over the longer term (10 years plus) and considered that this was enough time for the investment value to recover following market downturns. Given the investment had been managed in line with the agreed mandate UBS did not uphold this element of the complaint either.

Unhappy with the complaint response issued by UBS, Mr S referred his complaint to this service in June 2023.

Our investigator looked into things and concluded that UBS had not acted unreasonably. The investigator stated that the advice to move to the SI portfolio was considered suitable as it matched the agreed risk profile and Mr S's objectives.

The investigator did not believe the focus on sustainable investments nor the 100% hedging to Sterling made the recommendation to invest into the SI portfolio unreasonable. Regarding the disclosure of the hedging on the SI portfolio, the investigator noted that UBS and Mr S disagreed on whether this had been disclosed in June 2020, however concluded that this was not sufficient to deem the advice unsuitable, in part due to the content of the discretionary mandate which allowed UBS to manage the investment funds as they saw fit.

Mr S did not agree and maintained that the advice provided by UBS was unsuitable, the concentration on sustainable investments and currency hedge made the proposed investment too high risk and that he had not been provide with sufficient information about the proposed investments before agreeing to them.

As the investigator was not minded to change their outcome, the case has been passed to me for 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.

The first element of the complaint I have considered is the suitability of UBS's recommendation to move from the CMP strategy to the SI portfolio.

There are rules and guidance laid out by the Financial Conduct Authority which cover how businesses must act when providing financial advice to consumers. Some of these have been referenced in the complaint documentation submitted to this service. I would like to ensure all parties that all the relevant rules, guidance and principles have been fully considered in reaching this decision. This includes, but is not limited to:

- Principle 2 - A firm must conduct its business with due skill, care and diligence.

- Principle 6 - A firm must pay due regard to the interests of its customers and treat them fairly.
- Principle 7 - A firm must pay due regard to the information needs of its clients and communicate information to them in a way which is clear, fair and not misleading.
- Principle 9 - A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment.

And

COBS 9A.2.1 R which states:

“(2) only recommend investment services, financial instruments and insurance-based investment products, as applicable, or take decisions to trade, which are suitable for the client and, in particular, in accordance with the client’s risk tolerance and ability to bear losses.”

Having considered the chain of events detailed above, and all the evidence on file, I have reached the same conclusions as our investigator and for broadly the same reasons.

The documentation produced at the time of advice confirmed that the SI portfolio had a “growth” risk profile. Mr S was confirmed as being willing to accept “significant” volatility over an extended investment time horizon of over ten years.

Given Mr S had clearly held investments over an extended timeframe I would consider him to have significant experience of investments and volatility, with their being no evidence within the file to suggest the agreed risk profile was unsuitable.

I have considered the additional point made stating that the focus of the new SI portfolio on sustainable investments introduced a concentration risk that had not previously been present, and this had increased the risk level of the SI portfolio to an unsuitable level. I however do not agree.

The fact the SI portfolio concentrated on sustainable investments would not in isolation make the portfolio higher risk. Sustainable investments can be diversified into different asset classes and geographical locations with their being no reason to suggest UBS could not sufficiently diversify the portfolio to ensure they remained within the agreed “growth” risk profile. UBS confirmed this at the time of advice stating: *“Their risk/return characteristics are in line with 'traditional' mandate solutions and target a similar performance in the long run.”*

Whilst the historical CMP strategy may not have had the same constraints in only targeting sustainable investments, this itself does not make the recommendation to move into the SI portfolio unsuitable.

In addition to the concentration risk, Mr S has also stated that the 100% hedging of the SI portfolio to Sterling also increased the risks associated with the new investment proposition to an unsuitable level, and that had he been aware of this hedging Mr S would not have agreed to the recommendation.

Regarding the hedging, I again agree with the outcome communicated by our investigator and do not believe this moved the SI portfolio to a position where it no longer met the agreed risk profile. The advice documentation confirms that the SI portfolio was a diverse portfolio looking to make investment returns from cash, bonds, and equities with a more “global approach” than the CMP strategy.

Whilst I note Mr S's comments stating that he believes there is a correlation between the performance of investment assets in a particular geographical location and the strength of the local currency, the SI Portfolio was not looking to make returns based on currency changes.

The hedging back to Sterling allowed the investment managers to concentrate on making investment gains in global markets whilst removing the possibility of any such foreign gains being undone by currency fluctuations.

Whilst I accept that over the time the SI portfolio was held it underperformed the CMP strategy, this does not mean the recommendation of the SI portfolio with its underlying hedging was unsuitable.

I have carefully considered the commentary stating that had Mr S been aware of the currency hedge, he would not have accepted the recommendation to move his pension investments into the SI portfolio.

The evidence here is contradictory. UBS stating that the hedging on the SI portfolio was disclosed to Mr S on a call held on 4 June 2020. Mr S for his part states that the hedging was not discussed at that time.

I have assessed the call notes provided by UBS covering this 4 June 2020 call and the commentary included is inconclusive. The call notes confirm that Mr S was "frustrated" with aspects of the current investment solution and alternatives were discussed. These included the SI portfolio however any discussions around the specifics of the offering (notably the hedging) are not included in the call notes.

Our investigator concluded that the lack of specific evidence around what was, or was not, discussed in relation to the hedging was not sufficient to uphold the complaint as the discretionary service mandate gave UBS the right to amend the investments as they saw fit without referring back to Mr S (or the other policy holders) before changes were made.

I have fully considered the requirement for UBS to provide sufficient (clear and not misleading) information however remain of the opinion that our investigators outcome was reasonable.

The discretionary service mandate agreed by all policyholders gave UBS significant authority to manage the pensions funds, making any changes they thought reasonable in order to seek investment growth over the longer term. No authority was required from any of the policy holders before such changes were made with UBS only having to ensure they remained within their remit as laid out in the mandate.

As such, the provision of underlying investment specifics at the time of advice would be of limited value, as UBS could change these at any time. The key consideration is whether the recommendation of the SI portfolio itself was suitable, and as per the rationale above I have decided it was.

Mr S has stated that the SI portfolio would not have been accepted had the hedging applied to the portfolio been fully discussed beforehand. As above, it is impossible for me to know exactly what was said at that time, or to know whether Mr S (or any of the other policyholders) would have acted differently. Whilst Mr S has been clear he would have made an alternative decision, this statement must be placed in context. Mr S (and the other policyholders) statements came with the benefit of hindsight once performance figures could be compared.

From the content of the emails exchanged between Mr S and UBS in August 2022 it is clear that at that time there was some confusion around hedging. In response to an article seeking to discuss currency risk in globally diversified portfolios, and confirmation that the SI portfolio was fully hedged to Sterling Mr S questioned *“So, we were currency hedged prior to moving to SI?”.*

It is not clear whether the confusion related to the hedging applied to the SI portfolio, that which applied to the previous CMP strategy, or both.

Whilst I accept that given the choice the policyholders would now make an alternative investment decision, I do not believe there is sufficient evidence to conclude they would have done so in 2020.

Having reached these conclusions, I have gone on to consider the performance aspect of the complaint. Here I also agree with the outcome previously communicated by our investigator.

I accept that the performance of the investment was not as Mr S expected, and that it had underperformed the previously held CPM strategy, however, there were no guarantees associated with the SI portfolio and no evidence that that investments were not managed by UBS as per the agreed mandate.

Overall, whilst I accept this is not the outcome Mr S wanted, I am not upholding this complaint.

My final decision

In line with the rationale above I am not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr S to accept or reject my decision before 21 March 2024.

John Rogowski
Ombudsman