DRN-4614730

The complaint

Mr A says UBS AG misled him on 11 July 2022 by recommending an investment in Sanofi shares despite having information, which it withheld from him, about foreseeable problems likely to affect the shares' value. He also alleges that UBS breached regulatory and contractual obligations in this respect, and mismanaged a conflict of interests in the matter.

UBS disputes the complaint. It says the recommendation was suitable for Mr A and that it was supported by investment analysis on Sanofi by its Chief Investment Office ('CIO') and by its CIO's Research Review Committee ('RRC') at the time.

What happened

I issued a Provisional Decision ('PD') for this case on 22 January 2024. One of our investigators had previously considered the case and concluded that it should not be upheld. In the PD, I concluded the opposite – that the complaint was provisionally upheld.

The background summarised in the PD was mainly the following –

"*UBS provided an advisory service to Mr A in this case. Its recommendation to him on 11 July was twofold. First, he was advised to sell his portfolio's holding in Novo Nordisk ('NN'), a pharmaceutical company, because its analysts had downgraded its shares to a 'sell' rating. The recommendation summarised reasons for this in the suitability report. The report then recommended reinvestment of the liquidation proceeds in Sanofi, another pharmaceutical company. A summary of reasons was given for this recommendation too. He followed the recommendation.*

A month later, on 11 August, Mr A complained to UBS about the Sanofi investment recommendation, after his Sanofi holding had lost value. He also sought its input on what to do about the holding in terms of mitigation against further losses. Later, on the same date (11 August 2022), UBS confirmed that his Sanofi holding had been sold for him.

UBS issued its response to the complaint in October 2022. It referred to investments being inherently risky, to its CIO's investment calls not being absolute and to the possibility that its recommendations might not perform as well as expected, but said its advisory role in Mr A's portfolio included ensuring a balanced portfolio that could cope with investment losses. With regards to the specific recommendation, it said Sanofi's stock had been on its CIO's RRC list of 'most preferred' healthcare stock since November 2021, and that it remained on this list in July 2022 when the recommendation was made to Mr A; and that its position in this list resulted from considerable due diligence and research within UBS and from other industry sources.

UBS considered that Mr A's adviser's recommendation was consistent with and supported by the above. He replied to the outcome, disagreed with it and highlighted that UBS had missed the point of his complaint. He referred to an internal UBS research document of 30 June 2022, pre-dating the recommendation, in which a preview of Sanofi's second quarter ('2Q') was a subject matter and in which UBS expressed, for reasons related to a clinical trials hold in the United States ('US'), an expectation that investors will be disappointed by its

overall position; and that issues associated with the trials hold could mean investors will no longer give the asset the benefit of the doubt. In its complaint response, UBS had said this issue had been considered by its CIO's analyst and was not considered a material market risk when it gave (and retained) Sanofi's most preferred stock rating.

Mr A also referred to evidence that one of the matters associated with the trials hold and with UBS' preview of Sanofi was an impending US legal class action at the time. He argued that neither this nor the concerns in UBS' 30 June preview of Sanofi was reflected in the recommendation he received; that there is evidence of the preview leading to UBS' revision, on 9 August, of its rating for Sanofi stock, in which it downgraded the rating from buy to neutral; that broadly the same problems known before the preview were used as reasons for the revision; that the revision's reasons also included express reference to the impending litigation; that UBS withheld all these material information, and qualifications for its advice, from the recommendation; and that the overall effect was that the recommendation was misleading. He also cited evidence from within UBS confirming a conflict of interest that was not disclosed to him in the recommendation, and referred to his dissatisfaction with UBS' complaint handling process."

The PD then summarised the investigator's findings and Mr A's rebuttals to them. Thereafter, my provisional findings were set out.

As part of his submissions to the investigator, Mr A asked for a telephone conversation with the deciding Ombudsman. In response, the PD mainly said –

"*I acknowledge Mr A's request for a telephone conversation prior to a decision. I do not find that such a conversation is necessary. The relevant factual events in his case are largely undisputed, and both parties have been given ample opportunities to exhaust their submissions in support of their respective positions – which they appear to have done. There is also what I consider to be sufficient documentary evidence (including submissions from the parties) available within our file for his case. In this context, I do not anticipate that there will be meaningful added value in a telephone conversation with either party. I am also concerned by the potential effect, of granting Mr A's request, upon our application of a fair process. If granted, there would be a conversation with him but without UBS' presence, and therefore without it having an opportunity to directly witness the conversation's contents and to respond within it*."

I also noted that PD gave both parties a further opportunity to make additional submissions, so, I said, this too served as a ground to decline Mr A's request.

In response to Mr A's complaint handling and regulatory breach allegations, the PD said –

"*I can determine complaints about regulated activities, like the investment advice activity in Mr A's case. Complaint handling, in isolation, is not a regulated activity. It is also not an ancillary activity connected to the conduct of a regulated activity.*

Sometimes a complaint to a firm and its alleged mishandling of it might form a part of the substantive case. If so, addressing the firm's complaint handling might be a necessary part of determining the overall complaint.

Mr A's 2022 based complaint is not that type of case. Its subject is the 11 July recommendation; he complained about it on 11 August; on the same date his Sanofi holding was liquidated; and UBS then responded to his complaint on 6 October. As such the subject of his complaint had effectively concluded by the time he made the complaint, and long before the complaint went through UBS' process, so UBS' complaint handling is an isolated matter that is outside my remit."

"*As Mr A is aware, we are not the industry regulator. Where matters of alleged regulatory breach relate to issues in a complaint, we normally address them as part of our determination of the issues in a complaint. We do not address them as stand-alone matters of alleged regulatory breach. That would be covered by the regulator's remit. It is not covered by ours. I have taken this approach with Mr A's case, so I make no findings on any allegation he wishes to pursue about UBS breaching regulations. However, his general argument in this respect, and as part of his complaint issues, has been considered amongst other aspects of the complaint.*

The above also applies to his allegation about UBS' mismanagement of a conflict of interests. I do not make a separate finding on this below because, as I will explain, there are sufficient grounds directly related to the Sanofi recommendation to provisionally uphold his complaint, so it has not been necessary to consider whether (or not) the alleged conflict of interest mismanagement added to the unsuitability of the recommendation."

A part of Mr A's response to the investigator's findings – and, before that, a part of his response to UBS' complaint findings – was that consideration (by both) of his complaint had been misguided. In addressing this, the PD said –

"*In a nutshell, and on balance, I agree with Mr A's observation that UBS misdirected itself in treating his complaint. The investigator's treatment of the complaint was similar to UBS' and I understand the points he made to support his findings. However, it is apparent to me that Mr A's complaint is not necessarily about suitability in general, but instead about a distinct and specific aspect of UBS' regulatory duty to ensure its recommendation of the Sanofi shares on 11 July was suitable for him.*

Having gone through his complaint submissions, I consider that Mr A has been consistent in his core allegation against UBS – being about misrepresentation within its recommendation that misled his decision making on the recommendation. It is mainly about UBS not disclosing to him downside related views it held on the Sanofi shares, as depicted in its 30 June research document (and he argues that further discovery from the investigator might have unearthed more evidence, dated prior to the 11 July recommendation, of internal research documents with similar contents); and not disclosing to him information it was aware of about the litigation case associated with Sanofi.

These non-disclosures are matters of fact, and are undisputed."

Based on the above understanding of the complaint, the PD made the following main provisional findings –

"*Other than transaction charges and a low expectation for its pipeline, UBS' advice to Mr A on 11 July said nothing else about the downside(s) of the Sanofi recommendation.*

In contrast, and as stated in the previous section, its internal research document of 30 June (which was not disclosed to Mr A at any time before the recommendation) expressed concerns specifically related to the US clinical trials hold, concerns that investors will be disappointed by Sanofi in 2Q and concerns that the circumstances could mean investors no longer gave Sanofi the benefit of the doubt. I am satisfied that, as a matter of fact, the 11 July suitability report to Mr A would have looked and read very different if these concerns were included within it. Even more so if specific information about the US litigation issue was also included within it.

As presented, the suitability report essentially gave the Sanofi shares a relatively glowing recommendation, with acknowledgement of transaction costs which the adviser said were

outweighed by the potential for increased returns and a brief reference to the low pipeline expectation which the adviser said was an historic hangover. Had the concerns from the 30 June document and information about the litigation issue been included, the recommendation would have been significantly qualified."

"*Under the regulator's Conduct of Business Sourcebook ('COBS'), at COBS 9, a firm's regulatory responsibility to ensure the suitability of its advice is defined, and the associated requirements of that responsibility are set out. In terms of providing suitability reports to clients, COBS 9.4R says firms' suitability reports "must at least" include, amongst other things, information about "possible disadvantages" of a recommendation. Possibility of a potential disadvantages is therefore the test that applies to my consideration of whether (or not) the non-disclosures that Mr A has cited were material to UBS' recommendation.*

In the above context, information about specific and known factors that UBS considered, less than a fortnight before the recommendation, to be matters that risked or were likely to affect investor confidence in Sanofi, and about its awareness of the US litigation issue (which also undoubtedly had nexus with investor confidence in Sanofi, as Sanofi had a proprietary interest in Zantac) could not reasonably have been viewed as immaterial to its recommendation of Sanofi to Mr A.

As Mr A has repeated in his submissions, UBS provided an advisory service. UBS has affirmed the same. It had no discretion over, or role in, his final investment decisions. Those decisions were solely his. Material risks associated with its recommendations had to be disclosed to him. Even if, as it has argued, it did not take the view that there were risks which affected its rating for Sanofi at the time or that there were factors which would have affected its recommendation of Sanofi to him, the minimum it was required to do was to disclose the relevant material risks – as the above were – and then perhaps give its opinions about those risks. It did that with regards to the transaction costs and low pipeline expectation, so it could and should have done the same for the above."

"As the investigator noted, there does not appear to be evidence of meaningful developments in the US litigation issue during 2022. I observe the same, but for a different reason. There was relative proximity between the 11 July recommendation and UBS' downgrading of its Sanofi rating on 9 August, and I am not persuaded that it has presented a competent explanation about what happened after 11 July and up to 9 August that gave it cause to apply the downgrade. In the absence of such an explanation I am persuaded by Mr A's argument that the 30 June research document and UBS' concerns within it were essentially the foundation for the downgrading decision it subsequently took on 9 August. As stated above, the document conveyed specific causes for concern about investor confidence in Sanofi, those causes appear to have continued during July and they (alongside the US litigation issue that UBS was also mindful of) appear to have reached a certain point in UBS' considerations on 9 August to prompt the downgrading.

In this context, I can understand and I am inclined to agree with Mr A's assertion that he was knowingly misled by UBS in the matter. By this, I mean the following –on 30 June UBS was already considering grounds for concerns about a potential problem with investor confidence in Sanofi; it would have known how the markets rely quite heavily on 'confidence'; if, as it appears, nothing immediately thereafter gave it reason to think otherwise; if, as it appears, nothing up to 9 August gave it reason to think otherwise; and given that it then felt compelled to reflect its concerns in the downgrading on 9 August, it should never have recommended Sanofi to Mr A less than a fortnight after 30 June – or, in the alternative, it should never have made the recommendation without giving him full and meaningful insight into the concerns it had at the time.

As I said above, it is probable that Mr A would not have invested in Sanofi if he knew about

the material information that UBS withheld from him. UBS' research documents in June and August present a number of reasons – related to investor confidence – why investors would not have bought Sanofi shares at the time. I have seen no evidence to say those reasons would not applied to, and would not have been taken seriously by, Mr A at the time. The recommendation was initiated by UBS, so the investment did not result from a specific interest he previously had in Sanofi. He accepted the advice to liquidate the NN holding, but it is unlikely he would have invested in Sanofi but for UBS' recommendation."

The PD then set out the likely redress provisions that will be included in a final decision if its findings and conclusion were retained.

Both parties were invited to comment on the PD. Mr A did not submit any comments, but UBS did. Its comments were quite substantive and I took the view that it could be helpful to share my initial observations on them – and to allow for any responses to those observations that it might have – before proceeding with a final decision. I wrote to UBS and said the following –

"*I summarise below your main submissions on the PD and my observations on each.*

- *You say – Mr A chose to sell the Sanofi shares (in August 2022) against UBS' advice; thereafter, and by March 2023, its share price had rebounded above the pre-investment level.*

Observation – Mr A has not complained about the sale of the Sanofi shares, his complaint relates to the recommendation he received from UBS to buy the shares.

- *You say – UBS strongly objects to the conclusion in the PD that it 'knowingly misled' Mr A; the conclusion is wrong and should be withdrawn; it is erroneously based on the June 2022 research note produced by UBS IB; UBS WM and UBS IB are completely separate and distinct businesses with information barriers between them; UBS WM is entitled to take its own view on whether (or not) a risk is material and should be disclosed to a client; it can take on board UBS IB's input, but that input does not determine its view; the 'asset' referred to in the June 2022 note was a particular drug not Sanofi stock; I misread this as the latter, instead of the former; the drug had nothing to do with the Zantac litigation matter; and the note conveyed nothing about Sanofi stock.*

Observations – the paragraph you partly quoted from the PD should be considered in full, and I have copied and pasted it below; it says I understood and was 'inclined to agree' with Mr A's assertion about being misled and it proceeded to give reasons; the rest of the paragraph set out a questions-based analysis (depicted by the use of 'ifs') that could create ground(s) to support Mr A's assertion; some of that analysis has been addressed in your submissions and will be considered; with regards to UBS IB and UBS WM, no information barrier appears to have concealed the former's June 2022 research note from the latter, and it is the case that the latter was aware of it prior to UBS' 11 July 2022 recommendation to Mr A; with regards to the research note's contents, it includes the statement "… we expect investors to be somewhat disappointed", this must surely mean Sanofi investors (given that the relevant drug, in itself, did not have investors); does this not support the part of the quote below that says – "… on 30 June UBS was already considering grounds for concerns about a potential problem with investor confidence in Sanofi" …

- *You say – UBS accepts it had a duty to inform Mr A of risks that a reasonable person in his position, and in the circumstances, would have considered material; but that did not mean a duty to disclose every potential matter that might have an impact on the share price.*

Observations – The PD is sufficiently clear that the main issue in consideration is about disclosure of material risks; the quote from the PD copied and pasted below is an example of this; within the quote, reference is made to downsides/risks that UBS' recommendation to Mr A did mention; they related to transaction costs and a low expectation for Sanofi's pipeline, neither of which the recommendation considered to be cause for Mr A to avoid the stock; in contrast, the investor confidence concern identified in the June 2022 research note could arguably have been cause for an investor (like Mr A) to avoid the stock, yet it was not mentioned in the recommendation; and the same applies to the Zantac litigation, that too was known beforehand and could arguably have been cause for an investor (like Mr A) to avoid the stock, yet it was not mentioned in the recommendation …

- *You say – The PD's reference to COBS 9.4R, from the regulator's Handbook, is wrong; it is COBS 9A that applies to the case; specifically, COBS 9A.2.1R and COBS 9A.2.4UK apply to the case, and it is the latter that says how the requirement to disclose risks to clients must be considered; furthermore, it is incorrect for Mr A to say UBS WM had a free-standing general duty to give information about Sanofi generally or to disclose matters that could influence a client's decisions.*

Observations – Mr A's case relates to the recommendation of the Sanofi 'shares'; at the outset of COBS 9, at COBS 9.1.1R it says the COBS 9 chapter applies to, amongst other things, a firm that "makes a personal recommendation to a retail client in relation to a designated investment"; it is not in dispute that UBS made the relevant recommendation to Mr A or that he was a retail client; the Handbook's glossary confirms that shares and stock are included in the definition of 'designated investment'; thus far, this appears to establish that COBS 9 is relevant to Mr A's case; COBS 9.4R addresses suitability reports; the first sub-section deals with a firm's obligation to provide one, but it is a matter of fact that UBS provided a suitability report to Mr A so said obligation is not disputed, and this sub-section is arguably irrelevant; the same applies to the following sub-section about 'timing', given that there does not appear to be a claim in his case about the timing of UBS' suitability report; the sub-section that follows, COBS 9.4.7R, is about the contents of a suitability report; Mr A's case is about the contents of the report he received from UBS; this sub-section does no more than set out the minimum content requirements of a 'suitability report'; COBS 9A.2.1R is about a firm's obligation to assess suitability, Mr A's case is about the 'contents' (and omissions from those contents) of UBS' suitability report, so it is unclear how this COBS provision is relevant to the 'contents' of a suitability report; COBS 9A.2.4UK is about information firms are required to obtain from clients in order to assess suitability, it is unclear how this COBS provision is relevant to Mr A's case about the information (specifically, the lack of information) given to him in UBS' suitability report (in other words, information a firm gives to clients in its suitability report).

- *You say – the key question is about whether (or not) the Zantac litigation was a material risk at the time of advice that should have been disclosed to Mr A in the suitability report; an element of judgment must be applied in this respect; primarily the recommendation had to be suitable for him, UBS maintains that it was and that in this context it is right to say the Zantac litigation was not a material risk to disclose; this was a view consistently held within UBS at the time; litigation is an inherent risk in the pharmaceutical sector; the Zantac litigation had been running for some time and there was no reason to believe it would suddenly impact on Sanofi share prices at the time of advice; the facts show that the recommendation was suitable and that the temporary drop in share price was later followed by a rebound, illustrating that the Zantac litigation was not, and should not have been considered, a material risk.*

Observations – As observed above, UBS applied judgement in favour of disclosing the downsides/risks related to transaction costs and the low expectation for Sanofi's pipeline,

despite considering neither to be a cause for concern, yet it applied judgment not to disclose its concerns about investor confidence in Sanofi (which it held prior to its advice to Mr A); where an element of judgment must be applied there is also capacity or potential for misjudgement; given the facts of the case, there is scope to find that UBS misjudged the matter of disclosing investor confidence concerns and the Zantac litigation to Mr A, as material information he ought reasonably to have been informed of, and that he reasonably needed to make an informed decision on the recommendation; there is no evidence that UBS foresaw the rebound that followed the drop in share price, hence the neutral stance it took on the stock in August 2022, so that subsequent event offers no relevance to UBS' earlier judgment call on its disclosures (or lack of) to Mr A.

- *You say – The PD wrongly relies on evidence after the point of advice, by referring to the research note of August 2022; that note reflected a change in investor confidence; investor sentiment is inherently difficult to predict, and it could not have been taken into account at the earlier point of advice.*

Observations – The research note of August 2022 was considered in the PD as part of a wider context, and that context is as set out in the PD; in terms of investor confidence/sentiment, the June 2022 research note already confirmed UBS' concerns in this respect; that consideration existed prior to the recommendation to Mr A, and it could (and arguably should) have been reflected in the suitability report issued to him."

UBS responded to my observations. Its submissions concentrated on the interpretation of the COBS rules that it considered relevant to the complaint, the matter of whether (or not) it had misled Mr A and its obligation to disclose material risks to him. The submissions repeated some of what it had previously argued. In the main and in summary –

- UBS maintained, with reasons, that the PD's references to COBS 9 and COBS 9.4R were wrong, and that its application of COBS 9A is correct.
- It asserted, with reasons, that – "*there is no evidence to suggest that UBS WM intentionally chose to conceal a material risk from Mr A or otherwise intended to mislead him …*".
- It said, with reasons, that the outcome of the complaint turns on whether (or not) the Zantac litigation was a material risk that ought to have been disclosed to Mr A, and that based on the information available at the time of advice it took the reasonable view that it was not.

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.

I have reviewed the case and the post-PD submissions from UBS. Having done so, I have not been persuaded to depart from the main findings and outcome in the PD. I endorse them and incorporate them into this decision. I also endorse and incorporate the post-PD observations I shared with UBS.

Mr A made no submissions on the PD, so he has not commented on my findings about his telephone conversation request, his complaint mishandling allegation, his regulatory breach allegation and his mismanaged conflict of interests allegation. I have reviewed these matters and my conclusions remain as expressed in the PD (and as quoted above).

UBS has conveyed, in both of its post-PD submissions, a notable strength of feeling about the allegation that it misled Mr A and about the following paragraph in the PD –

"*In this context, I can understand and I am inclined to agree with Mr A's assertion that he was knowingly misled by UBS in the matter. By this, I mean the following –on 30 June UBS was already considering grounds for concerns about a potential problem with investor confidence in Sanofi; it would have known how the markets rely quite heavily on 'confidence'; if, as it appears, nothing immediately thereafter gave it reason to think otherwise; if, as it appears, nothing up to 9 August gave it reason to think otherwise; and given that it then felt compelled to reflect its concerns in the downgrading on 9 August, it should never have recommended Sanofi to Mr A less than a fortnight after 30 June – or, in the alternative, it should never have made the recommendation without giving him full and meaningful insight into the concerns it had at the time*." [my emphasis]

It considers that the above amounts to me forming a 'conclusion' that it misled Mr A. The contents of the paragraph speak for themselves, and the majority of the paragraph (as emphasised above) explained precisely what was meant by its first sentence. As I said in the observations shared with UBS – "… *the paragraph you partly quoted from the PD should be considered in full … it says I understood and was 'inclined to agree' with Mr A's assertion about being misled and it proceeded to give reasons; the rest of the paragraph set out a questions-based analysis (depicted by the use of 'ifs') that could create ground(s) to support Mr A's assertion; some of that analysis has been addressed in your submissions and will be considered* …".

The allegation about being misled is a part of Mr A's complaint. UBS has been aware of this from the outset. His complaint emails to UBS expressed the allegation, and the complaint he referred to us included the allegation. He was/is entitled to define *his* own complaint, and it is reasonable to reflect the complaint, in a decision, as he has presented it. UBS' objection to and rejection of the allegation has also been reflected (as evident in the contents above).

The quoted paragraph (above) did not constitute the 'conclusion' that UBS appears to have read into it.

No conclusion has been reached on Mr A's allegation that he was misled by UBS. I have read and understood the comments made by UBS that relate to the questions-based analysis I mention in my observation, but I have concluded that no further consideration of or finding in this specific matter is necessary. It poses a distraction from the main issues in Mr A's complaint. It is a complaint that does not necessarily need his allegation about being misled to be determined. As I made clear in the PD – and maintain presently – UBS' wrongdoing was that it did not disclose the investor confidence and Zantac litigation issues to Mr A as material risks that ought reasonably to have been disclosed to him. This is enough to uphold his complaint and, for the reasons given in the PD and below, it is the ground on which I do so.

The debate over the applications of COBS 9 and COBS 9A appears to have created another distraction from the main considerations in this case. The facts are that UBS provided a suitability report to Mr A and that the report contained information on upsides and downsides/risks in its recommendation, to him, to buy the Sanofi shares. UBS also accepts that it was obliged to disclose material risks to him. As such, the main question to address is about whether (or not) the non-disclosures I mentioned above amounted to material risks that should also have been shared with him.

UBS' submissions in this respect have mainly highlighted its views on the suitability of the recommendation to Mr A, the internal analysis and reasoning it applied to the advice it gave him, its internal approach towards the issues raised in the 30 June research document and the Zantac issue, and the practicalities of assessing and disclosing risks in the course of giving advice. It also says I have misread the 30 June research document, and it has presented how it believes I should read it.

Mr A's claim is that if UBS had shared the information in the 30 June research document and information about the Zantac litigation he would not have accepted its recommendation to buy the Sanofi shares. Even if UBS disagrees with this assertion, it has not disproved it. As I said in the PD, "*The recommendation was initiated by UBS, so the investment did not result from a specific interest* [Mr A] *previously had in Sanofi*", and I have not seen evidence that he would have bought the shares in any case. To echo the PD, the case is therefore distinct from one about alleged general unsuitability. It is about the relevant non-disclosures that all parties have been addressing, so UBS' views about the general suitability of its recommendation are still irrelevant.

The same applies to its internal approach towards the concerns mentioned in the 30 June research document and the Zantac litigation. At the time of advice Mr A did not know of that internal approach and the considerations within it. What UBS now describes is arguably worthless to him, and quite irrelevant to the complaint, because it was not disclosed at the point of advice and it has been presented after the event. If, as I noted in the PD, UBS had disclosed the matters to him in its suitability report and had coupled that with its opinion or advice about whether (or not) they were risks he should take seriously, that would be a different matter. It did not do that. For these reasons, its descriptions of how it satisfied itself, internally, about the contents of the 30 June research document and the Zantac litigation does not aid my determination of the complaint.

I do not consider that I have added anything to the relevant contents of the 30 June research document. I have understood it based on its wordings, and I quoted an important part of those wordings in the observations I shared with UBS. The context in the document was analysis related to another Sanofi drug, other than Zantac, for which a partial clinical hold had been placed due to a problem in trials. The sub-heading on the first page of the document described the drug as having hit "*a pothole*". I quoted part of a sentence from the document. The full sentence included – "*We think 2Q will be otherwise positive … but given* [the drug] *is designated a priority asset by Sanofi in a pipeline that is seen as otherwise containing only a handful of potential major drivers of future sales growth and that the* [trials] *data were a major point of interest next year we expect investors to be somewhat disappointed*".

The statement and the context in which it was set are reasonably clear. They have not been misread. The statement refers to the drug being one of the main sales prospects for Sanofi, to only a handful of other such prospects in Sanofi's pipeline and to an expectation of investor disappointment. In the wider context, that disappointment related to how investors were expected to view the effects of the trials problem and partial clinical hold – or *pothole* – that the drug had encountered.

This was about investor confidence, and it serves as evidence of UBS being aware of a potential problem with such confidence, in relation to Sanofi, *before* its recommendation to Mr A to buy Sanofi shares. The document was produced less than a fortnight before the recommendation. Overall and on balance, I consider that the concerns within it ought reasonably to have been shared as a material potential downside of the recommendation for him to be aware of. It did not.

The recommendation mentioned Sanofi's pipeline, but said nothing about this specific investor confidence concern (which the research document addressed also in the context of 'pipeline'). It said Sanofi's pipeline was expected to be low, but the reason it gave was – "… *reflecting a historic lack of internal productivity*". This was a generic reason and it gave Mr A no insight into the specific concerns expressed in the 30 June document about investor confidence in Sanofi (and the specific reasons for that).

UBS disclosed this generic, *historic lack of internal productivity* as a potential pipeline related downside in its recommendation, yet it omitted information on a relatively up-to-date and specific pipeline/sales prospects/investor confidence related potential downside. It appears to have viewed the former as material information, given that it disclosed it, but it viewed the latter – despite its relevance to Sanofi's sales and investor confidence – as immaterial. On balance, I disagree, and I find that the latter was material information about a material risk within the Sanofi recommendation, that should have been disclosed to Mr M.

The same conclusion applies to UBS' non-disclosure of the Zantac litigation. It says litigation is not unusual in the pharmaceutical sector, but it could not reasonably have expected Mr A to assume there was impending litigation related to Sanofi, unless told otherwise. Instead, and given that it was aware of the ongoing Zantac litigation, that information should simply have been part of the material information shared with him.

Litigation commonly creates uncertainty, because outcomes cannot be guaranteed, and uncertainty potentially affects investor confidence, so the existence of ongoing litigation associated with a stock can be a material risk that should be disclosed in advice. Information about it will potentially, if not probably, play a role in the decision-making process used by an investor to whom the shares have been recommended. An investor might not want exposure to any stock associated with ongoing litigation. I have not seen anything in his profile that would have said to UBS that the Zantac litigation would be irrelevant to Mr A. Instead, it mainly relied on its internal view on the litigation and concluded that was enough to justify not disclosing it to him.

In the circumstances of the present case, and as Mr A has highlighted, the Zantac litigation was a significant and sizeable one, so that gave even more reason for UBS to regard it as a material risk that should be disclosed. Even if, as it argues, the information had been known to the market for a while, the fact is that the litigation was ongoing so it is arguable that it was not to be ignored or dismissed. Mr A was entitled to know about it and to take his own *informed* view about it. He could not and did not do that because UBS did not inform him about it.

Overall, on balance, and for the reasons given above, the reasons given in the PD, and the observations shared with UBS, I find that UBS' advice to Mr A was unsuitably incomplete (due to the specific non-disclosures of material information/risks that have been addressed) and I uphold his complaint. As I said, with reasons, in the PD – "… *it is probable that Mr A would not have invested in Sanofi if he knew about the material information that UBS withheld from him*."

Putting things right

In deciding what is fair compensation my aim is put Mr A as close as I can to the position he would probably now be in if he had not been given unsuitably incomplete advice by UBS. But for that advice, he would probably not have invested in the Sanofi shares.

It could be argued that Mr A might have remained invested in NN. However, this cannot be said with certainty or probability. He has not complained about UBS' advice to liquidate the NN holding so he would probably have sold it in any case and the proceeds would probably have been reinvested elsewhere. However, *any* suitable investment/reinvestment step could then have been taken after liquidating the NN holding.

It is not possible to say precisely where the reinvestment would have happened so, based on evidence that Mr A had a balanced investor/risk profile, I have used the redress benchmark stated in the table below. The redress calculation takes into account the liquidation of his Sanofi holding and all connected subsequent investments/reinvestments

made after that liquidation.

Mr A is ordered to engage meaningfully and co-operatively with UBS to provide it with all information and documentation, relevant to its calculation of redress, that it does not already have.

To compensate Mr A fairly, UBS must:

- Compare the performance of Mr A's Sanofi investment and the performance of all connected subsequent investments/reinvestments made after its liquidation (and up to the end date stated in the table below) with that of the benchmark shown below. If the actual value is greater than the fair value, no compensation is payable. If the fair value is greater than the actual value there is a loss and the difference is compensation payable to him, and that must be paid to him.

- Add any applicable interest, on the terms set out in the table below, to the compensation payable.

- In addition, pay Mr A £300 for the distress and inconvenience that the matter has caused him.

Income tax may be payable on any interest paid. If UBS deducts income tax from the interest it should tell Mr A how much has been taken off. UBS should give him a tax deduction certificate in respect of interest if he asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Investment Name	Status	Benchmark	From ("start date")	To ("end date")	Additional Interest
Sanofi investment and all connected subsequent investments/reinvestments made after its liquidation	Unknown	FTSE UK Private Investors Income Total Return Index	Date of Sanofi investment	Date of this decision	8% simple per year from the date of this decision to the date of settlement (if redress is not settled within 28 days of UBS receiving notice of Mr A's acceptance of the decision)

Actual value

This means the actual amount payable from the investment at the end date.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

Any additional sum paid into the investment should be added to the fair value calculation from the point in time when it was actually paid in.

Any withdrawal, income or other distributions paid out of the investment should be deducted from the fair value calculation at the point it was actually paid so it ceases to

accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I will accept if UBS totals all those payments and deducts that figure at the end.

Why is this remedy suitable?

- Mr A had a balanced investor/risk profile at the time of the Sanofi recommendation/investment.

- The FTSE UK Private Investors Income Total Return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return. Although it is called an income index, the mix and diversification provided within it is close enough to allow me to use it as a reasonable measure of what Mr A would have achieved if the NN liquidation proceeds were suitably reinvested.

- The additional interest is only to compensate Mr A if UBS unduly delays in settling redress and compensation owed to him, following its receipt of confirmation that he has accepted the final decision. It has been given 28 days before the interest provisions are triggered, and I consider this a reasonable period to calculate and resolve the payment of redress.

Compensation limit

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £150,000, £160,000, £170,000, £190,000, £350,000, £355,000, £375,000 or £415,000 (depending on when the complaint event occurred and when the complaint was referred to us) plus any interest that I consider appropriate. If fair compensation exceeds the compensation limit the respondent firm may be asked to pay the balance. Payment of such balance is not part of my determination or award. It is not binding on the respondent firm and it is unlikely that a complainant can accept my decision and go to court to ask for such balance. A complainant may therefore want to consider getting independent legal advice in this respect before deciding whether to accept the decision.

In Mr A's case, the level of potential loss does not appear likely to reach any of these maximums, but he is still reminded to consider getting independent legal advice in this respect before deciding whether (or not) to accept this decision.

My final decision

For the reasons given above, I uphold Mr A' complaint. I order UBS AG to calculate and pay him redress and compensation as set out above, and to provide him with a calculation of the payment in a clear and simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 11 March 2024.

Roy Kuku
Ombudsman