

## The complaint

Mr P complains that Rathbone Investment Management Limited (“Rathbones”) persuaded him to transfer to its discretionary service, after which poor and reckless investment decisions were made which led to him losing money.

## What happened

Our investigator has already set out in detail what happened, and I won’t repeat all of that again here. In brief summary, Mr P had been a long-time client of a broker, firstly under an execution only arrangement, then under a non-discretionary arrangement. In 2018 Rathbones took over that broker’s business and Mr P agreed to move to a non-discretionary arrangement with Rathbones. His advisor remained the same individual.

In November 2020 he signed a discretionary agreement with Rathbones. And shortly afterwards Rathbones carried out a series of transactions on his account. In August 2021 Mr P complained that those transactions had led him to lose money and that he would have been better off if he’d remained with a non-discretionary agreement. He said he had been wrongly categorised as having a “very high” attitude to risk and that it made no sense for the portfolio to have a long-term time horizon, because of his advancing years.

Rathbones said all transactions which took place under the discretionary agreement were in line with its central research guidance and aimed to provide strong returns over the medium to longer term. It said the investments needed to be rebalanced to achieve a well-diversified portfolio in line with Mr P’s agreed objectives and risk profile. Whilst it didn’t uphold his complaint, it said it appreciated Mr P’s time and trouble and offered to pay him £200.

Our investigator didn’t recommend that the complaint should be upheld. She didn’t think Rathbones had done anything wrong when it came to the operation of the discretionary investment portfolio.

Mr P didn’t agree. He replied in detail to say, in summary, that:

- It’s wrong to say the discussions about moving to a discretionary portfolio started in January 2019. When his portfolio was transferred to Rathbones, he chose a non-discretionary arrangement and, as far as he was concerned, this ended the discussion. But Rathbones continued to try to persuade him to move to a discretionary arrangement, despite his refusal. He finally agreed in late 2020 when he panicked at the disappearance of his dividend income.
- Rathbones categorised him as having a “very high” or “level 6” risk profile. This doesn’t fit his attitude to risk, and he wouldn’t have agreed with it. He didn’t receive the letter dated 6 August 2019 which the investigator says set out his objectives and attitude to risk. He would have rejected this if he’d seen it.
- Rathbones said that very high risk was appropriate because he was invested in 100% equities. But this doesn’t differentiate those who invest in “safe” blue chip companies and those who engage in speculative short-term trading.

- The five-to-ten-year time horizon for investment was never discussed and, for someone of his age, is absurd.
- No attention was given to the timing of the trades which took place on 18 November 2020. All the shares sold subsequently rose in price and all the purchases fell.
- The regional manager of Rathbones refused to answer his questions about the trades, but passed him to the complaints team, who passed him to this service.

### **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.

Firstly, I'm aware that I've summarised this complaint in far less detail than the parties and in my own words. There is a considerable amount of information here but I'm not going to respond to every single point made. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

Secondly, I think it's important to clarify this service's role. Mr P says that we should be protecting the individual investor from mismanagement of their savings, whereas he feels the investigator has protected the business. But our role is an impartial one. We investigate the individual circumstances of complaints and decide whether the business has done anything wrong and, if it has, what it should fairly and reasonably do to put things right.

Having carefully considered everything here, I find I have come to the same conclusion as the investigator for much the same reasons. As the investigator set out her reasons in some detail, rather than repeat those, I will concentrate on the key comments Mr P raised in response to her conclusions. For ease of reading, I've used sub-headings.

#### *The discretionary agreement*

Mr P clearly regrets signing a discretionary management agreement. But I don't find Rathbones acted inappropriately here. Let me explain why.

Mr P had had a non-discretionary arrangement for many years, and he'd been happy with that. The move from his old broker to Rathbones was an opportunity to review his current arrangement and to consider other options. I can see this was discussed in or around January 2019, but that Mr P chose to stay with a non-discretionary arrangement.

I don't think it was inappropriate for Rathbones to continue the discussion about the suitability of a discretionary arrangement over the coming months. I say this because Mr P was travelling extensively and, during a phone call and meeting in the summer of 2019, he told Rathbones he probably no longer had the time or inclination to manage the portfolio himself. He signed a discretionary agreement in November 2020. He says this was prompted by the post-Covid drop in his investment income and he "panicked". But I think he'd already been considering it because of his previous comments about lacking the time and inclination to keep an eye on his investments himself. I can't see evidence that he was pressured by Rathbones to sign a discretionary agreement. I accept Rathbones' advisor highlighted his discretionary management performance history, but I don't find this was inappropriate – I would have expected this to be covered as part of the discussion about the potential benefits of the discretionary service.

### *The risk classification*

Mr P's previous broker assessed him as having a "very high", or level 6, attitude to risk. When his portfolio transferred to Rathbones, Rathbones explained it had "mapped" his risk profile across to its own risk levels. It categorised Mr P as having "risk level 6" which it described as:

*"This risk level is applicable to a portfolio where the investor has a high-risk tolerance. It aims to generate a return over time well in excess of inflation. We expect the value of the investments to fluctuate significantly which could more than reflect the volatility of equity markets. The portfolio will include a high exposure to shares. Whilst there may be some modest exposure to asset classes that are considered to have lower risk characteristics, the focus will certainly be on equities and is therefore suitable for investors with a longer time horizon and the capacity to withstand capital loss".*

This was set out in a letter to Mr P dated 23 July 2019. On 1 August 2019, Mr P completed a "Client information Update" and confirmed that his preferred risk classification for the portfolio was "very high (6)". Rathbones again set out Mr P's risk classification in a letter dated 6 August 2019. And I can see the risk profile, plus the relevant description, was also set out in the valuations sent to Mr P each quarter. Mr P says he didn't receive the 6 August 2019 letter and that he would have objected to his risk classification if he'd received that letter. Even if Mr P didn't receive that letter, I'm satisfied that he should reasonably have been aware that he'd been categorised with a very high-risk profile because it was reasonably clearly set out in other communications with him, and he'd signed the client information update to confirm it was accurate. I'm also satisfied that Mr P had the opportunity to contact Rathbones if he didn't think a very high-risk profile was suitable for him.

That said, Rathbones also had a duty to ensure the risk category was suitable for Mr P. The very high-risk profile seems to have originated to reflect the lack of diversification in Mr P's portfolio when he managed it with his previous broker. In particular, around 40% of his portfolio was invested in one company. I'm satisfied that Rathbones explained the risks of this lack of diversification to Mr P and that he must reasonably have understood that the concentration of his portfolio in one holding reflected a very high-risk approach.

I'm also satisfied that very high risk reflected the profile of *this* portfolio, rather than Mr P's overall attitude to risk. It's clear this portfolio was not Mr P's only investment or source of funds. Although he chose not to provide full details of his finances to Rathbones, it's clear that Mr P's circumstances were such that he wasn't reliant on this portfolio to maintain his standard of living. And he'd ticked a box in the August 2019 Client Information Update to say that he could "*withstand some permanent loss*" of capital from his portfolio "*without significant and immediate consequences to your financial security or standard of living*". This leads me to conclude that a "very high risk" portfolio wasn't unsuitable in Mr P's circumstances.

Mr P has questioned Rathbones' description of very high risk. He says that it means 100% is invested in equities but that this doesn't differentiate the type of equities and nature of trading. There isn't a standard definition of risk, and it's up to Rathbones how it chooses to define each of its risk categories. It provides an indication of how much of the portfolio might be invested in equities and it suggests that its "high" and "very high" risk categories could have 100% investment in equities. I don't find that to be inappropriate.

### *Investment time horizon*

Mr P says a five-to-ten-year investment time horizon wasn't appropriate for him, in view of his advancing years. I understand his concerns, but I can see that he chose a five-to-ten-year investment time horizon when he completed the Client Information Update form. I think it's important to take into account that Mr P continued to enjoy a very active and busy lifestyle and didn't make his adviser aware of any health concerns. I'm satisfied that the relationship with his advisor was such that his circumstances were regularly discussed, and the time horizon could be revisited as and when necessary. Taking his individual circumstances into account, I don't find the time horizon to be inappropriate.

#### *Timing and suitability of trading*

In signing a discretionary management agreement, Mr P agreed that Rathbones would manage his investments and make changes without his agreement. I'm satisfied Mr P was aware that under a discretionary mandate Rathbones would reconstruct the portfolio to ensure it was suitable for Mr P's investment objectives and risk profile. In particular it was necessary to decrease some of Mr P's existing overweight holdings and reinvest to ensure the portfolio was sufficiently diversified. I'm satisfied that, after the initial trades on 18 November 2020, Rathbones wrote to Mr P to tell him what it had done and why. And Mr P replied to say that he wasn't surprised with the majority of the trades, which suggests to me that he understood and agreed with the strategy being employed by Rathbones.

I don't think Rathbones acted unreasonably in carrying out trades when it did to reconstruct the portfolio to ensure it was suitable for Mr P. Whilst short-term price movements may not have been in Mr P's favour, this doesn't mean the trades were unsuitable, particularly taking into account the agreed longer term approach. And I'm satisfied Rathbones clearly set out its reasons for the trades after they'd taken place and explained this again in response to Mr P's complaint.

#### *Complaint handling*

As a business regulated by the Financial Conduct Authority, Rathbones is obliged to follow certain rules and regulations in response to a consumer's complaint. This includes treating an "expression of dissatisfaction" which may have led to financial loss as a complaint and handling it in accordance with its complaint management policy; and ensuring complainants are made aware of their right to refer to this service.

I'm satisfied that Rathbones acted appropriately, and in line with its regulatory obligations, in treating Mr P's letter to its regional manager as a complaint, rather than the regional manager providing a response. And Rathbones was obliged to tell Mr P about his right to refer his complaint to this service.

In its final response letter, Rathbones offered to credit Mr P's investment account with £200, in recognition of the inconvenience he'd been caused in bringing his complaint. Whilst I haven't upheld Mr P's complaint, I think it's fair that Rathbones honours this offer, and I'm pleased that it's told us it is still prepared to make this payment.

#### **My final decision**

My final decision is that Rathbone Investment Management Limited should pay Mr P £200.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 17 January 2024.

Elizabeth Dawes

**Ombudsman**