Ombudsman Decision
CIFO Reference Number: 25-000464
Complainant: Mr E
Respondent: Union Bancaire Privée SA Jersey

The Complainant, who I shall refer to as Mr E, complains that Union Bancaire Privée treated him unfairly when setting the terms on which it would provide him with a mortgage loan. The terms included the transfer of an existing investment to the bank.

Mr E considers that the investment has underperformed and that as a result he has suffered a significant financial loss which could have been avoided.

Background and initial conclusions

In 2021 Mr E was introduced through his financial adviser and a mortgage adviser to Kleinwort Hambros (now Union Bancaire Privée). He was looking to purchase a property which was suitable for his business. He owned other properties and received some rental income but having sold an earlier business his ongoing self-employed income was sporadic.

Kleinwort Hambros was prepared to lend but asked him to move an investment portfolio held with another provider to the bank. The portfolio could then be used as a proxy for income in its assessment of affordability for the mortgage.

Mr E's complaint is that the new investment portfolio has underperformed and was not fit for purpose. He considers that there was a conflict of interest in that the bank as lender also had something to sell (the portfolio arrangement) and that it failed to act in his best interests when setting out the loan terms.

Mr E would like the Bancair Privée to repay money lost on the investment and repay the amount remaining on the mortgage. He estimates his losses to be around £200,000.

Union Bancair Privée rejected the complaint saying:

- It provided Mr E with a mortgage to make the purchase. He did not have sufficient income to meet its lending criteria but with the transfer of the portfolio it was able to provide the loan.
- The portfolio was arranged with a balanced investment strategy in line with his circumstances and objectives. Performance has not been out of line with the *'expected range of risk and return.'*
- Management fees for the portfolio were correctly applied and disclosed. As a concession it continued to apply the minimum annual fee after he made a significant withdrawal in 2023, and the portfolio value dropped. The portfolio was closed in 2024.

As a gesture of goodwill, the bank has offered to refund the minimum quarterly fees applied between Q4 2023 and Q3 2024 a total of £7,500.

I reviewed the complaint and concluded that it should not be upheld. I was satisfied that the bank had set out the basis on which it was prepared to lend to Mr E and applied its lending criteria correctly when looking to the investment as part of the affordability assessment.

I saw no conflict of interest in the bank applying greater weight to an investment portfolio managed inhouse rather than by an external provider and ultimately the basis on which the bank was prepared to lend was a matter for its commercial judgment.

In relation to the investment, I was satisfied that the bank had acted appropriately when assessing Mr E's circumstances and risk appetite and that the investment itself had been managed to the mandate agreed with Mr E.

Subsequent Submissions

Mr E did not accept my conclusions. He said, in summary:

- He relied on Kleinwort Hambros to put a structure in place which was appropriate for his circumstances including the fact that he was not in a salaried role and relied on a combination of investment and rental income – and anticipated future income.
- His income was not salaried but the income he did have was not properly considered or represented. His existing investment was tax efficient and income producing; it should not have been replaced with a growth-oriented portfolio with no 'defined income mechanism.'
- Because the arrangement was unsuitable it does not matter that performance was in line with market performance. The existing investment provided smoothed stable withdrawals and did not expose his capital to market volatility.
- The new arrangement introduced taxable income with no corresponding benefit.

- He was led to believe that transfer of the investment was a contractual obligation and relied on those representations when making the surrender. In the event it was not a contractual term for the lending.
- The bank's stated criteria indicate a minimum investment threshold of £1 million whereas he had approximately £820,000 suggesting that it may not have applied standard criteria transparently and consistently.
- He engaged fully with the investment advice and review processes, but discussions were often *'highly technical and expressed in terminology that* [he] *did not fully grasp.'* His email correspondence indicates that he did not have a complete understanding of how the lending and investment structure would operate in practice.

Overall Mr E considers that the lending and investment structure exposed him to foreseeable and avoidable financial harm.

Union Bancaire Privée accepted my conclusions. For clarification it said that £1 million minimum threshold referred to loan size rather than investment portfolio.

My Findings

I have considered all the available evidence and arguments to decide what is, in my opinion, fair and reasonable in the individual circumstances of this complaint.

Mr E wanted to buy the property without disrupting his asset position in the short term, he did not want to sell one of his existing properties or cash in his investment bond. He has a number of advisers helping him through the process which enabled him to make the purchase and retain his existing assets.

But that does not mean that Union Bancaire Privée was absolved of the duty set out at section 2 of the Investment Business Code of Practice issued by the Jersey Financial Services Commission.

Section 2 is headed *'a registered person must have the highest regard for the interests of its clients'* and sets out requirements around the provision of investment advice including documenting investment objectives, establishing risk tolerance and ability to bear loss and provision of comprehensible and appropriate information so that the client can make an informed decision.

With all that in mind it remains my view that the bank set out the basis on which it was prepared to lend using the assets he had. It was for Mr E to decide whether he was prepared to accept the bank's terms which included moving his investment to meet underwriting requirements.

Mr E considers that there was a conflict as the bank was looking to secure his investment business as part of the arrangement. My own view is that was a commercial matter and not one which necessarily presents as a conflict. The bank sets its lending term taking into consideration the overall ‘attractiveness’ of the deal and the risk and reward when making the loan available. I have confirmed to Mr E that the bank applied the lending criteria in relation to the portfolio as a proxy for income as set out in its internal guidelines.

As set out above the provision of the investment advice on transfer was subject to regulatory codes and guidance. In my initial assessment I said:

‘I acknowledge your concern at the drop in the value of your portfolio before you decided to encash it fully in 2024, but I have seen nothing to suggest that the bank acted outside the investment mandate or risk profile agreed with you in 2001.

In reaching my conclusion I have noted the content of the Investment Services questionnaire which set out that you had had the portfolio with the Prudential for four and half years and that it was managed on a discretionary basis.

Your investor profile was noted as medium risk or 4 on a scale of 1 to 5. This was described as: 'you are looking to achieve capital growth and or income and you are willing to invest a substantial part of your portfolio in risky assets’ – with a recommended time horizon of five years. These assets included bonds, equities, hedge funds, commodity funds, property funds, and structured products.

What type of example of portfolio best meets your needs in terms of objectives and attitude to risk?

Risk Score	Objective	Potential Investment Instruments	Indicative Equity Allocation	[1] Historical Worst/Best 12 Months of Indicative Asset Allocation	[1] Historical Maximum Drawdown of Maximum Risk Asset Allocation	[1] Expected Maximum Risk (Loss)
	Recommended time horizon: 5 years					
4 ☑	**MEDIUM RISK** You are looking to achieve capital growth and or income and you are willing to invest a substantial part of your portfolio in risky assets Recommended time horizon: 5 years	Bonds Equities Hedge Funds Commodity Funds Property Funds Structured Products	50% Equity	-16% / +29%	-35%	25%

The investment risk questionnaire noted that you had a 15-25% capacity for loss with the purpose of the investment to build up savings and seize market opportunities.

You were looking at long term investment of more than seven years, the assets represented more than 75% of your net worth and you had no capital expenditure requirement but were looking for an income of £30,000 per annum.

You signed the questionnaire on 9 April 2021.

Risk profile

You have said that the Prudential investment was arranged on a 60:40 cautious/growth profile and provided you with a tax-free income of around £30,000 a year. The new investment was arranged on a balanced basis and therefore had a higher risk profile. Income was also taxable.

I have considered the email exchanges and can see that the tax position was discussed, and you took some external advice. The new portfolio was designed more for growth to minimise the impact of tax but as I understand it money was available to you as and when and you had other sources of income such as rent and your day-to-day activity albeit that was not sufficient to meet affordability criteria for the loan.

On the face of it I do not see the change in risk profile to be inappropriate against your wider circumstances and the wish to arrange your finances in a way that would allow the purchase to go ahead.'

I do not agree with Mr E's assertion that his financial position was not accurately characterised or that the arrangements put in place exposed him to foreseeable and avoidable harm. There was a slight change in risk profile and a change in the tax status but neither of these were concealed from Mr E nor in my view expressed in a way that was confusing. I remain satisfied that the change in risk profile was not inappropriate and he spoke with another adviser about the change in tax treatment.

Mr E later took the decision to rearrange his assets and make a significant withdrawal from the investment as early as 2022 with full encashment in 2024. As I said in my initial assessment the period of investment included significant market disruption from events such as war in Ukraine and unusual activity in the UK bond and gilt markets with an inflationary impact. Ultimately Mr E was eventually no longer in the market and could not benefit from later activity and I am mindful that the investment was arranged on the basis that it would be maintained over the medium term.

Overall, I have seen nothing in the information provided by Mr E and Union Bancaire Privée which suggests that the bank mischaracterised Mr E's circumstances or assigned an unsuitable risk profile when arranging the investment.

Final Decision

For the reasons I set out my final decision is I do not uphold the complaint.

I understand that the offer of a fee refund remains available to Mr E. If he wishes to accept that offer he should let Union Bancaire Privée know so that it can arrange for payment to be made.

Clare Mortimer
Ombudsman

Date: 7 April 2026