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Briefing
January 2021

Wealth Management Insights: When things go wrong – unsuitable advice, complaints and disputes

For
Your family ✓
Your firm ✓
Your society

Reading time
5 – 7 minutes

Enodo can help

By using its in-depth expertise on the topics of risk profiling, portfolio construction and investment instrument selection to examine the suitability of your portfolio, providing an independent view

By working with your legal team

By providing a perspective on individual advisor conduct and recommendations

By, in certain circumstances, acting as an expert witness

Executive summary

When it comes to working with a bank or investment advisor, occasionally things can go wrong – an investment may fall in value unexpectantly, a severe currency movement may have undue impact, or you might find yourself with a margin call on a loan or derivative position. Of course, if you were aware of the risks involved in a transaction, this will come as no surprise. But what should you do, if you feel that not everything was transparent? Recent years has seen high profile litigation against major banks. From the UK newspaper proprietor, Richard Desmond's GBP50m claim against Credit Suisse for structured product mis-selling to a GBP1.3bn claim against HSBC in relation to film partnerships, plus many more.

For anyone who is a client of an EU (or UK) institution, the Markets in Financial Instruments Directives (MiFID) have been key to ensuring proper suitability and appropriateness of advice. Other jurisdictions, such as Switzerland, Singapore, US and UAE, have either embraced MiFID principles or created their own similar regimes. Regulators generally make distinctions between: (1) private or retail clients who require more protection, and (2) professional clients who are more experienced. In this context, suitability is often assessed.

In order to ascertain whether you have cause for complaint, you should consider whether your advisor: (1) understood your circumstances, (2) kept that understanding up to date, (3) that recommendations reflected those circumstances, (4) that retail versus professional classification was correct, (5) whether the firm or advisor put their own interests first, (6) understanding of recommendations, including any leverage, (7) how your advisor has responded to any concerns you may have.

As a next step, if you feel you have cause for complaint, you should consider a formal complaint, and/or the engagement of legal advisors, as well as: (1) ensuring you collect together all relevant information, (2) being clear on your loss and expectations, (3) understanding the complaints procedures of the firm as well as the regulatory and legal environments concerned.

When it comes to working with a bank or investment advisor, occasionally things can go wrong – an investment may fall in value unexpectantly, a severe currency movement may have undue impact, or you might find yourself with a margin call on a loan or derivative position. Of course, if you were aware of the risks involved in a transaction, this will come as no surprise. But what should you do, if you feel that not everything was transparent?

Over recent years, there have been many instances of high-profile litigation against major banks and investment firms. From the UK newspaper proprietor, Richard Desmond's GBP50m claim against Credit Suisse for structured product mis-selling to a GBP1.3bn claim against HSBC in relation to film partnerships. Banks in the UK were also forced to pay out GBP36bn in claims relating to the sale of insurance on loan repayments.

It is an unfortunate reality that, occasionally, an individual might feel that they have been misinformed by an advisor. Perhaps you feel that a firm, or an individual advisor, was driven by their own revenues, an unduly optimistic view of markets, or a lack of reality in relation to the true downsides of an investment? You may therefore feel that you have suffered as a result – maybe financially, but also in terms of personal distress.

Suitability and appropriateness are key principles

For anyone who is a client of an EU (or UK) institution, the two Markets in Financial Instruments Directives (MiFID) have been key to ensuring proper suitability and appropriateness of advice. Other jurisdictions, such as Switzerland, Singapore, US and United Arab Emirates, have either embraced similar principles to MiFID or created their own similar regimes.

Most jurisdictions also make a distinction between: (1) private or retail clients, where it is implied that they are less sophisticated and require greater protection, and (2) professional or institutional clients, who are more experienced and therefore have greater freedom to invest and require less protection. There will be a range of objective and/or subjective criteria to determine which category you fit within.

Specifically, in the EU or UK under MiFID, **suitability** must be established and documented for all clients, where investment advice is given. Generally, this requires a process of risk profiling, understanding the client's circumstances fully, ensuring that any recommendation is clearly in their best interests within a portfolio context, that the client has the knowledge and experience to understand the recommendation, and ensuring that all risks are properly explained. These requirements are slightly modified where a client has professional status.

Whilst for any non-advised transaction – beyond straightforward securities transactions – **appropriateness** must be established. This recognises the ability and the experience of the client to undertake their own suitability assessment for themselves. The firm must act in the client's best interests, providing warnings as relevant, and apply a general reasonableness test to the actions of the client. Where are client has been classified as professional, certain dimensions of the clients' knowledge and experience will already have been tested.

A key point of weakness for any firm will be, either: (1) where they have provided unsuitable advice to a retail client, or (2) where they have allowed the upgrade of a client to professional status, but not done this with sufficient diligence or care.

Do I have cause for complaint?

At times, we have observed that an individual may feel that they have cause for complaint simply because an investment has fallen in value. Such beliefs are often unfounded. After all, an investment can fall in value and still be suitable for an individual's circumstances – for example, if: (1) the risks were explained, (2) an individual was able to withstand the potential losses and (3) there was not an undue concentration to the investment. In this instance, a client will unfortunately need to accept the situation, even if this was not one of their choosing.

In order to ascertain whether you have a genuine cause for complaint, you need to start with the following questions:

- Did my advisor undertake a process where they fully understood my personal and financial circumstances? Depending on jurisdiction, this might have covered topics, such as:
  - Understanding investment objectives
  - Understanding future income, liabilities/debts and cash requirements
  - Ensuring proper cash reserve/emergency fund
  - Understanding family circumstances and potential calls on capital
  - Understanding personal health, provisions for old age and insurance position
  - Assessing behavioural tolerance for risk or loss

- Did my advisor regularly keep the information on my personal and financial circumstances up to date? For example, via an annual review or questionnaire?

- Did my advisor propose an investment portfolio that reflected my personal and financial circumstances, and overall risk profile? How did the advisor relate what he/she was proposing back to your circumstances, was there a clear link, and was that recorded?

- If you were classified as a professional client, rather than a retail client, what process was undertaken to arrive at this? Was it properly documented, and do you fully understand why you were classified as such? Were you told that you might lose certain protections, as a result of the classification? Did you receive a notification confirming your change of status?

- Did you ever feel that an advisor put their own interests before your own? For example, did the advisor have a tendency to select higher fee/margin products when advising you? Did they ever generate additional fees via transacting in your portfolio, sometimes called *churning*?

- Did you feel that you understood the instruments or products recommended? Is there clear evidence that an explanation took place? With retrospect, did you actually feel that the investments were suitable, particularly if structured products, foreign exchange instruments, commodities or derivatives were involved?

- Was someone else (e.g. an advisor, or family member) taking investment decisions for your account? If so, how were you kept informed? Were they receiving all of the contact from the firm or advisor? Did you receive any statements or notifications?

- If leverage – in other words, borrowing in your portfolio to increase exposure – was recommended, how was this explained to you? Were there any simulations of the downside risk of using leverage? Was the process for a margin call explained to you? If a margin call *has* taken place, how did you feel that your bank or advisor has acted?

- In monitoring your portfolio, did you receive regular written reports in the form of commentaries or statements? Was your advisor regularly in touch to explain the performance and risks within your portfolio?

- If a particular investment *has* behaved unexpectedly, how has your advisor responded? With proactivity and regular communication, or by avoiding contact? Have you expressed displeasure or dissatisfaction, and how have they responded to that? Do you feel that they are simply stating the *official line* of the firm? Has there been a suggestion that you might be better taking your account elsewhere?

If you consider that your bank or investment advisor has fallen short in any of these areas, then you *may* have reasonable grounds for complaint, and further investigation is certainly necessary.

What should I do next?

The topics mentioned above, plus anything specific to your jurisdiction, may indicate that you have a cause for complaint. The next steps for you will be determined by: (1) the complaints procedures for the firm concerned, and (2) the regulatory and legal environment for both the country you are located in, and where the firm is located. Depending on the size and complexity of the complaint, legal advice is often essential.

That said, and in conjunction with your legal advisors, there are certain further actions you might consider taking, in preparation:

- **Gathering together a complete picture of your relationship with the firm/advisor concerned** – all letters, emails, statements, legal agreements and brochures. This will support the analysis of your position. In certain jurisdictions (e.g. EU, UK), it may make sense to formally request these from the firm, and data access laws may compel them to provide them

- **Retrieving your own personal notes of telephone communications and meetings. Then, ensuring that you take contemporaneous notes of any future conversation**. Indeed, in some jurisdictions (e.g. EU, UK), firms are required to record telephone conversations, and it may make sense to request a transcript

- **Being clear on the nature of your loss and how you might be compensated for it. Consider whether your perception of the loss is reasonable** – for example, “cherry-picking” the worst/only poor performing instrument in a well-diversified portfolio, that has otherwise performed well, may not be a worthwhile exercise

- **Understanding the complaints procedures of the firm, alongside the regulatory and legal environment.** It often makes sense to first pursue the complaints procedure of the firm, especially in more developed regulatory jurisdictions. You will need to weigh this, from a strategy perspective, against moving straight to formal litigation. Again, the size and complexity of the complaint, as well as the jurisdiction, will influence this decision.

Support from Enodo

At Enodo, we have in-depth expertise on the topics of risk profiling, portfolio construction and investment instrument selection. In addition, we have experience of complaints and disputes across jurisdictions, including mediation and court action.

We can support you through the disputes process, working with your legal team, and providing expert input on investment suitability. We also bring strong awareness of individual advisor conduct and behaviour and how that might contribute to unsuitable advice. We are open to appearing as an expert witness.

Conclusion

It is never pleasant when things go wrong. But, in that context, it is critical that you think objectively about what has happened. We have provided a range of questions that can act as prompts for you to help you consider whether you have cause for complaint.

We suggest you review these, alongside any rules that might be specific to your jurisdiction, to ascertain your next steps. At Enodo, we are here to provide support and expert input through this process. We recommend that you get in contact for a preliminary conversation.

About the authors

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Nick has over 20 years of experience in wealth management, predominantly spent at UBS where he was a Managing Director. He held a number of senior leadership roles, including Head of Wealth Management for Global Emerging Markets in London, where he led a sizable business advising wealthy families in Central & Eastern Europe, Middle East, Turkey, Israel, Africa, Latin America and Asia-Pacific.

For six years, Nick was Head of Investment Products and Services where he led the investment management, capital markets, alternative investments, lending and wealth planning functions, responsible for over USD50 billion of client assets, and a sizable lending book. He also founded the client philanthropy unit in the UK, which supported clients in maximising the strategic impact of their giving. He has been a regular media commentator. Over the years, he has also maintained a strong academic interest in business psychology.

He has served on numerous non-profit boards and is currently Vice Chairman of the governing body of Royal Holloway, University of London, amongst the top 25 in the UK and 250 globally. He also chairs the committee overseeing the university's USD100 million endowment.

He holds MSc in Organizational Psychology and MBA in Finance degrees from the University of London, is a Chartered Wealth Manager, Chartered Fellow of the Chartered Institute for Securities & Investment and Member of the British Psychological Society. He was elected Fellow of the Royal Society of Arts for his work in philanthropy. He is also a part-time Doctoral researcher in organizational psychology and family-owned business at Durham University.

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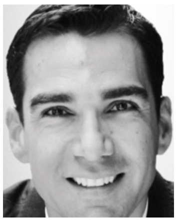

Baris has over 15 years of experience in wealth management and investment banking in London, Zurich and Frankfurt. Between 2006 and 2020, he worked for UBS, where he was a Managing Director.

He served as Head of the Global Family Office, Ultra High Net Worth Emerging Markets and Financial Intermediaries units for UK and Jersey, offering wealth management, structuring, lending and investment banking solutions to the largest clients of the firm. His team was entrusted with over USD12 billion of client assets.

Prior to this, he was responsible for various significant teams serving wealthy families in Central & Eastern Europe, Middle East, Turkey, Israel, Africa, Latin America and Asia-Pacific.

Before joining UBS, Baris was a research assistant to the Chair of International Banking and Finance at the Goethe University Frankfurt and a visiting scholar in Finance at the Wharton School, University of Pennsylvania.

He published papers on global stock exchanges in peer-reviewed academic journals, including the prestigious Journal of Banking & Finance, and was a regular commentator in the media.

Baris holds a Doctoral degree in Finance from Goethe University Frankfurt and the Diplom Kaufmann degree from the University of Regensburg, as well as an MBA degree. He has completed the Chartered Financial Analyst and Financial Risk Manager programmes.

The story of Enodo

Enodo is the Latin word to explain, literally to *unknot* or *untangle*. This encapsulates our vision – to bring clarity to the complexity of being wealthy.

Our founders have had the privilege of advising some of the world's wealthiest families. They've observed first-hand the liberation and opportunity that wealth can bring – unifying families around a common purpose, creating real economic impact via a family business, or contributing to wider society through audacious philanthropy.

At times, they've also seen the stress and confusion that can result. They've witnessed family disharmony, miscalculations in family business or investment strategy, and the hugely detrimental impact of working with advisors who put their own interests first.

Our founders have engaged in the discipline of advanced academic research. Their own analysis of peer-reviewed academic literature across the disciplines of finance, economics and business psychology, combined with their deep professional experiences, have allowed them to arrive at new perspectives on how *to be wealthy* and how *to manage wealth*.

The result of their thinking is the Enodo Leadership in Wealth™ advisory framework which supports wealthy families in using their wealth to lead across all the dimensions of their life – *family, firm* and *society*. Amongst other things, their framework includes:

For your family

- Family governance and family office set-up
- Investment risk and asset allocation – including family business assets and debt
- Chairing a family investment committee
- Selecting the best investment managers
- Analysing investment opportunities, including alternative investments and recent innovations (e.g. cryptocurrencies)
- Understanding the impact of investing in your passions, such as art and collectibles
- Monitoring of performance and risk
- Guiding and analysing where you are in dispute with your investment advisor

For your firm

- Organizational culture and performance
- CEO / founder succession and role of family members
- Financial optimisation – including debt, hedging and foreign exchange
- Reviewing your equity and debt capital market opportunities
- Corporate and social responsibility

For your society

- Philanthropy and impact investing
- Establishing a family foundation

The Enodo Goal-based Asset and Liability Allocation (GALA) Modeller™ offers ground-breaking insights into optimal strategic asset allocation – examining the risk characteristics of a family business shareholding and analysing tolerance for risk from psychological personality profiling. You can experience a shortened version of this powerful tool here.

At Enodo, we offer rigorous, independent and intelligent advice to wealthy families around the world. We aspire to be your trusted partner, wherever life may lead you.

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