

## The complaint

Mr F's complaint, against Capital Professional Limited trading as Ascot Lloyd (and referred to as such below) is about fund management charges which Mr F says weren't properly disclosed.

## What happened

I don't think there's any dispute about what happened. In 2017 Mr F was advised by Richard Keen Financial Services (Richard Keen) to use a discretionary fund manager (DFM) to manage his pension portfolio. Two recommendation letters were issued – on 24 May 2017 and 24 October 2017. Mr F understood he'd pay a fund management charge of 0.5% on around 70% of his portfolio in addition to the DFM's annual management charge (AMC) of 0.7% plus VAT. Mr F's complaint is about the fund management charge, not the AMC.

In December 2019 Mr F was told that Ascot Lloyd had acquired Richard Keen. Ascot Lloyd is now responsible for the advice Richard Keen gave.

The next contact Mr F had with Ascot Lloyd was in August 2020 when he arranged to start drawing from his pension. The drawdown commenced in around November 2020. Prior to that, in October 2020, he'd received an *'Investment Planning Report & Annual Review'*. From that he saw the fund management charges were higher than he'd believed.

He complained to Ascot Lloyd. It wrote to Mr F on 9 February 2021 setting out the DFM's responses to queries about the charges and what Richard Keen's suitability letters had said about the fund management charges. Ascot Lloyd also referred to new legislation which had come into effect at the start of 2018 aimed at making the costs of investing in products such as investment funds transparent and comparable and which required full disclosure of all costs and charges.

Ascot Lloyd wrote further on 26 February 2021. The DFM had confirmed that subsequent investments had contributed to the OCF (ongoing charges figure) increasing. Richard Keen's letter of 24 May 2017 gave an approximate figure of 0.5% for the fund management charge and went on to say that could apply to around 70% of the portfolio, so an additional 0.35%. The suitability report dated 17 October 2017 detailed an approximate OCF of 0.5%. Ascot Lloyd set out the OCF (in money and percentage terms) for 2018 and 2019.

In conclusion Ascot Lloyd said, while the information provided to Mr F in 2017 was in line with the then requirements, more warnings could've been given as to the possible increase in the level of charges. Ascot Lloyd offered the difference between 0.5% and the actual fee charged for the years 2018 and 2019. Mr F had paid a total of £9,474.46 in OCF charges, based on his average portfolio value for each year. Had the OCF remained at 0.5% for each year, he'd have paid £5,573.14. Ascot Lloyd offered the difference of £3,901.32. But, about the 2020 fees, Ascot Lloyd said it appreciated these may also be above 0.5%, but Mr F had received statements in early 2020 and, if he'd been concerned about the level of the fees, he could've raised it and looked to consider an alternative investment. So Ascot Lloyd's offer didn't include the 2020 fees.

Mr F asked Ascot Lloyd to reconsider the 2020 fees. Ascot Lloyd declined and Mr F referred his complaint to us.

Our investigator said there were two issues to consider: First, the recommendation letter had quoted a fee of 0.5%; secondly, the charge would only be applied to around 70% of the portfolio which in effect reduced it to 0.35%. The investigator said the charge was around 0.63% in 2018 and 0.97% in 2019 and above 0.5% in 2020. Throughout the charge was applied across the full portfolio and not just 70%.

In respect of the first issue the investigator accepted that any ongoing charges figure wasn't fixed and could change, depending on performance and trading costs, so only an estimate could be given. But he agreed with Ascot Lloyd that more should've been done to make it clear the fee could be higher than 0.5%. On that basis, the offer to pay the difference between the 0.5% detailed in the recommendation report and the actual fee was fair.

But Ascot Lloyd had only offered to pay that for 2018 and 2019, even though the charge for 2020 also exceeded 0.5%. The investigator said it was important to consider if Mr F could've mitigated his losses. But Mr F had said he had no reason to believe he was being charged more than what was originally agreed. The investigator accepted that Mr F wasn't aware of the additional charge until the review in October 2020. He'd then complained promptly when he'd noticed the charges were more than he'd thought he'd agreed to. On that basis, the investigator said Mr F should be refunded the difference between 0.5% and the actual fee for the period already refunded but also for the period after this until the date of settlement.

About the second issue, the recommendation report dated May 2017 said the 0.5% charge could apply to around 70% of the portfolio, meaning the fee was, in effect, reduced to 0.35%. Whilst this wasn't covered again in the October 2017 letter, Mr F had said the same was discussed with the adviser. It wasn't wrong for the adviser to explain, if the charge was applied to 70% of the portfolio, it would, in effect, equate to an additional 0.35% rather than 0.5%. Mr F may have seen that as an indication of the fixed cost. But the amount that would actually be charged was determined by the make-up of Mr F's portfolio.

Where, as here, a DFM is engaged, it's the DFM's responsibility to select and manage the investments in line with its mandate. The adviser wouldn't be involved in the selection and so the investigator didn't think Ascot Lloyd should be held responsible for an increase or decrease in charges because of the portfolio make-up. Ultimately the reason for the fund management charge being applied to the whole portfolio was because of the decisions taken by the DFM. As the make-up of the portfolio was out of Ascot Lloyd's control, it wouldn't be fair for the offer to include the difference between 0.35% and the actual charge.

Mr F was prepared to accept the investigator's findings. Ascot Lloyd wasn't. It maintained the difference between the 0.5% and the actual charges should only be calculated for the years 2018 and 2019.

As agreement couldn't be reached the complaint was referred to me to decide.

### **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.

Having done so, and although I've considered everything again, I agree with the conclusions reached by the investigator and the reasons he gave. I don't have much to add.

Ascot Lloyd accepts that the fees the DFM would charge weren't as clearly explained as they might have been. In consequence Ascot Lloyd has agreed to reimburse Mr F with the difference between 0.5% and the actual fee charged for the years 2018 and 2019. But I agree with the investigator that it would be fair and reasonable for Ascot Lloyd to reimburse Mr F with the difference in the fees up to date.

I say that for two reasons. First, in so far as the fees charged for 2020 are concerned, although Ascot Lloyd has pointed to the statements sent in March 2020, Mr F has said it wasn't until he got Ascot Lloyd's October 2020 report that he saw he'd only actually see a third of any growth, which led him to check the fees were as he'd been led to expect. Like the investigator, I don't immediately see, in the absence of anything specific, why Mr F would've been prompted to check the fees were as he'd understood them to be. Mr F has also said it wasn't obvious from the statements that the DFM's charges were more than he'd been expecting. But the October 2020 report set out in a simple, tabulated, form Ascot Lloyd's and the DFM's fees which made clear the level of fees compared to the assumed returns arising from the growth rates illustrated.

Secondly, Mr F says he asked his Ascot Lloyd adviser on 22 October 2020 about possible alternative fund management service levels and charges (which had been mentioned at the meeting the previous day). But the adviser said he was unable to give advice while the complaint was being considered. So Mr F may have continued to incur the same level of fees up to date and pending a resolution to his complaint. I don't think it would be fair to say he should've mitigated by adopting an alternative investment strategy or selecting a different service level without advice.

I think it's fair and reasonable for Ascot Lloyd to meet the difference between the 0.5% and what Mr F has actually been charged, not just for 2018 and 2019 but up to date.

I've considered the other point, about the proportion of the portfolio that the charge attaches to. The suitability report dated 24 May 2017 says, about the fund management charge:

*'Approximately 0.5% pa for the underlying funds that [the DFM] use to make up [Mr F's] holdings. This could apply to around 70% of the portfolio, ie an additional 0.35%.'*

The later report, dated 24 October 2017, didn't refer to 70% but Mr F says his discussions with the adviser confirmed what the earlier report had said.

Although 70% was mentioned in the May 2017 report, I think it was clear it wasn't a fixed figure but an estimate – the report said the charge *'could'* apply to *'around'* 70% of the portfolio, in which case the overall charge would be 0.35%. I think it was also apparent that the exact charge would depend on the underlying funds selected by the DFM, which would vary, so an exact figure couldn't be given. As the investigator pointed out, as there was a DFM in place, day to day investment decisions and what assets are bought and sold and when, was down to the DFM and not Ascot Lloyd.

So, although based on the 24 May 2017 suitability report and discussions with Richard Keen's adviser, Mr F would've been expecting the fund management charge to be around 0.35% overall, that was only an indication and it could be more, depending on the underlying funds that the DFM selected. On that basis, and as fund choice was outside Ascot Lloyd's control, I don't think it would be fair to say that the 0.5% fund management charge should be further reduced to an equivalent of 0.35%.

### **Putting things right**

In awarding compensation my aim is to put Mr F, as far as possible, in the position he'd be in now but for any shortcomings on the part of the business. Here Ascot Lloyd has accepted that more could've been done to ensure Mr F knew the fund management charges could be higher than indicated.

I agree with the redress suggested by the investigator. Ascot Lloyd should refund to Mr F the difference between the fund management charges he's paid and the 0.5% indicated in the recommendation report. That should be calculated from 2018 as offered but up to the date of settlement (ie up to the date of payment of the refund).

If possible the compensation should be paid into Mr F's pension plan. But not if it would conflict with any existing protection or allowance. If paid into the pension, the payment should allow for the effect of charges and any available tax relief. If payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr F.

### **My final decision**

I uphold the complaint.

Capital Professional Limited trading as Ascot Lloyd must redress Mr F as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 9 November 2022.

Lesley Stead  
**Ombudsman**