

## The complaint

Mr H complains Ascot Lloyd Financial Services Limited (Ascot Lloyd) failed to forward documents about his Aegon pension plan to him, delaying him from taking his benefits. He also says it received commission which it wasn't entitled to. He wants compensation for his lost income.

## What happened

Mr H took out a s226 pension plan through his independent financial adviser (IFA) in 1988 with a pension provider which subsequently became Aegon. The IFA business was also sold on several occasions over the years but continued to advise Mr H about his plans. In March 2014 Mr H's IFA was acquired by a business that became Ascot Lloyd.

Ascot Lloyd contacted Mr H proposing new terms and conditions to review and advise on his arrangements in return for an initial and ongoing fee. Mr H declined as he felt he'd already paid for this when the plans were set up. It contacted Mr H subsequently, but he again declined its services. Mr H says he removed Ascot Lloyd from involvement with his main pension arrangement, also with Aegon, in 2015.

Mr H says he decided to review his pensions during 2018 with a view to drawing them earlier than he'd planned due to health issues. He says he was unclear on the exact plans he held and had lost track of the s226 plan (with Aegon) and was unsure who this policy was with. He said he hadn't received any details about it since Ascot Lloyd had taken over the previous IFA in 2014. Mr H says he *"started this conversation .... mid 2019"* with Ascot Lloyd, seeking to identify the missing plan.

Mr H also contacted Aegon on 8 August 2019, obtaining some information about the plan. He requested that Ascot Lloyd be removed from involvement with the s226 plan. Aegon confirmed this by letter on 8 August 2019 and enclosed a unit statement showing transactions between 2014 and 2019. Mr H then contacted Ascot Lloyd on 29 August 2019 for an update.

Ascot Lloyd said it had been removed as agent for the Aegon plan, but it would investigate his queries further and get back to him. Mr H says without a response, he followed up again in June 2020 and then had to chase further before making a complaint on 1 December 2020. He said it had taken too long to respond to his queries, had received fees it wasn't entitled to and had failed to forward documents sent to it about his Aegon plan and possibly other plans with Aviva.

Ascot Lloyd rejected the complaint. It said it was recorded as the servicing agent because it had taken over the IFA business, but it hadn't received fees or commissions as no service agreement was in place. It said it had received copies of three documents, where the originals had been sent directly to Mr H, but hadn't received anything since 2017.

Mr H didn't accept this. He said he'd already paid for the arrangements to be set up by the IFA and it wasn't fair to be asked to pay a 3% fee again to review them. He said Aegon was sending Ascot Lloyd annual statements which it wasn't passing on. Ascot Lloyd said Aegon

had made the servicing agent change automatically rather than it requesting it. It also said it wasn't responsible for the advice the previous IFA had provided, as Mr H's had also raised concerns about not being informed about early retirement options.

Mr H referred his complaint to our service and our investigator looked into it, and she decided to uphold the complaint in part.

She said Ascot Lloyd hadn't taken over the previous IFA's liabilities and wasn't responsible for any advice it had given. She said Mr H had to be treated as a new customer by Ascot Lloyd and it was entitled to charge for this. And as Mr H had declined it wasn't obliged to provide him with services and advice going forward. However, she said this would be different if Ascot Lloyd had received commissions or fees since 2014, but that she hadn't seen any evidence that this was the case.

But she said even without a service agreement Ascot Lloyd should have forwarded the statements received from Aegon. She said, without hindsight, it wasn't possible to say whether Mr H had been financially disadvantaged by this. But that Mr H had been inconvenienced by Ascot Lloyd's failure to update him in August 2019 and he had to raise the same queries in June 2020. And the first time Mr H's concerns were properly addressed was during the investigation of his complaint. She said Ascot Lloyd should pay Mr H £200 in compensation for the inconvenience caused by this.

Ascot Lloyd disagreed with our investigators view but said it would pay the compensation to settle the complaint. Mr H also disagreed. He made a number of points and provided further evidence which he said showed Ascot Lloyd had received fees and commissions from Aegon and another insurer. In summary he said:

- The Aegon plan benefited from a guaranteed annuity rate (GAR) and he'd been denied earlier access to this from the age of 55 costing him around £4,000, because of the failure to provide him with annual statements.
- He provided a letter from Aegon dated 18 September 2019, confirming renewal statements were issued yearly to Ascot Lloyd.
- He said the renewal statements were addressed to Ascot Lloyd's parent company and not to him.
- He said he believed small fees had continued to be paid to Ascot Lloyd and provided a unit statement from Aegon showing a deduction of £12 per year.
- He said Ascot Lloyd had dropped him as a client because he hadn't accepted a 3% fee. He noted our investigators comments about this but said it was "*open to massive abuse by unscrupulous firms*".
- He provided a letter from Aegon dated 8 August 2019 confirming it had removed Ascot Lloyd from the policy.

He said these documents showed he'd been "*financially disadvantaged*". Mr H subsequently advised he'd recently found the original policy and other documents in his loft. But said that Aegon had never sent him annual statements direct but always via the IFA.

Our investigator said in view of this further evidence Ascot Lloyd should now do more to resolve Mr H's complaint fairly.

She said one of Mr H's other pension providers (Aviva) had confirmed it had paid commissions to Ascot Lloyd. She said it shouldn't have received these funds and it should work out the impact of this on Mr H's pension fund in terms of lost growth and if a loss had been caused it should return it to him.

She said it was likely that Ascot Lloyd had received the annual renewal notices between 2014-19. And these should have either been forwarded to Mr H, or been returned to Aegon with advice it wasn't the serving agent. She said Ascot Lloyd should pay Mr H £200 for the inconvenience caused and reimburse him for the annuity income he hadn't been paid since August 2019, when he'd contacted it about the Aegon plan.

Mr H accepted our investigators view and said if Ascot Lloyd agreed to compensating him for the lost annuity income, he would waive the nominal amounts paid to it in commissions.

Ascot Lloyd disagreed. It said Aegon had written directly to Mr H about the plan in 2013, so he was aware of it and that he could have contacted Aegon at any time. It said any commissions paid by the Aviva policy, which was set up in 1989, were in relation to charges for the establishment of the plan rather than for ongoing service. It said it was willing to pay the £200 compensation for not being "pro-active" if it had received annual statements and for the subsequent poor service in responding to Mr H. But it didn't agree it was responsible for any loss in relation to a delay on the annuity as Mr H had both refused advice and "did not contact the providers directly to find the information he required".

As Ascot Lloyd doesn't agree it has come to me to decide.

### **My provisional decision**

I issued my provision decision on 10 November 2022; I explained the reasons why I was planning to uphold the complaint in part. I said:

*I've considered all the available evidence and arguments to decide (provisionally) what's fair and reasonable in the circumstances of this complaint. Having done so, I'm planning to uphold the complaint in part. But to be clear to Mr H at this stage I don't think it's fair to say Ascot Lloyd is responsible for delaying the arrangement of the annuity.*

*I know that this will disappoint Mr H and I'll explain why below. But even if Ascot Lloyd had received commission payments (and further clarification is required here) I don't think it was obligated to provide Mr H with ongoing services or advice in respect of the Aegon or Aviva plans.*

### **Was Ascot Lloyd required to provide services**

*Ascot Lloyd offered Mr H ongoing advice and services which he declined on more than one occasion. So, I don't think it was obliged to provide ongoing services and advice to him and it wasn't responsible for the advice provided by the previous IFA's involved. Mr H says he moved one of his other pension arrangements (also with Aegon) away from Ascot Lloyd in 2015, which I think also confirms he didn't want to use Ascot Lloyd services.*

*Aviva has confirmed that it did pay commission on a policy to Ascot Lloyd but has provided no other details. I haven't seen evidence that confirms commission was paid on the Aegon plan. The Aegon unit statement confirms a fixed deduction of £1 per month, which may be a policy fee or similar charge retained by Aegon. But even if commission was being paid it was on plans arranged many years ago, when the rules applying were very different from now.*

*Ascot Lloyd has said the Aviva plan began in 1989 and the policy schedule provided by Mr H shows the Aegon plan began in 1988. Then it was common for advisers to be paid a commission by the product provider for introducing the business to it. This often comprised an upfront amount and a smaller ongoing payment, often called trail commission. The commission payment was an agreement between the product provider and the adviser. And*

*was paid from the charges made on the product by the provider, which were separately agreed between the consumer and the product provider.*

*So, any commissions were paid by the product provider for the introduction of the business rather than for any ongoing service to the consumer. Advisers often agreed to provide further advice if requested but there was usually no obligation to do so unless separately agreed between the consumer and the adviser. So, the receipt of trail commission in itself didn't give the adviser an obligation to provide ongoing services to the consumer.*

*This changed considerably on 31 December 2012 with the Retail Distribution Review (RDR). This banned trail commission on any new products but allowed those already being paid on existing arrangements to continue. On the evidence I've seen so far this seems to be what happened here in respect of the Aviva plan. If so, then Ascot Lloyd hasn't done anything wrong in receiving these payments, and there is no requirement for it to carry out a loss calculation on the Aviva policy.*

*Ascot Lloyd has explained that in effect it only purchased the previous IFA's client bank. It wasn't responsible for the advice it had given or any existing service agreements in place. This is why Ascot Lloyd proposed new terms and conditions (and charges) for its services. That isn't unreasonable. As Mr H declined these services, I don't think it was obliged to provide Mr Lloyd with ongoing services on these plans. But I do think it could have been more proactive regarding the statements it was receiving and either forwarded these or told Aegon to send them directly to Mr H.*

#### ***Did Ascot Lloyd delay the purchase of the annuity***

*It isn't clear to me that it did.*

*The earliest point Mr H could have taken benefits from this plan was April 2013, so before Ascot Lloyds involvement. And he says he received advice about this plan from the previous IFA in 2012. It proposed transferring the plan, which Mr H says he decided against in view of "its enhanced minimum benefits".*

*This suggests to me that Mr H was reasonably aware of the plan and the benefits it offered. He has said he wasn't aware that "Aegon was holding" this plan as it was sending information to the IFA's, not him. Whilst the plan was originally with Scottish Equitable, this business was taken over by Aegon in 1998 and Mr H has said the IFA provided annual statements to him, so for many years. And as advice had been offered about the plan in 2012, shortly before benefits could be drawn, it's likely that information from Aegon about this plan was discussed then. Ascot Lloyd has located a portfolio report of Mr H's investments prepared by the old IFA dated 1 May 2009. This sets out a schedule of his pension plans and clearly shows the s226 arrangement with Aegon and its policy number. And since bringing his complaint Mr H has confirmed he has located the original policy schedule and other missing documents in his loft.*

*So, even without receiving benefit statements from Ascot Lloyd I think it's likely that Mr H had enough information available to him to be reasonably aware that the missing plan benefiting from the GAR was held with Aegon. And I think he could have contacted it about the plan if he wanted further information, which, is ultimately what he did shortly after he contacted Ascot Lloyd in 2019.*

*Once Ascot Lloyd acquired the old IFA's client bank it offered Mr H a review and a meeting was organised for August 2015. Mr H cancelled this and decided not to become a client of Ascot Lloyd. Mr H removed it from involvement with another of his pension plans with Aegon in 2015. Ascot Lloyd contacted Mr H again offering a review in July 2016, which he also*

*declined. This indicates to me that Mr H didn't expect Ascot Lloyd to provide him with services.*

*Taking these points together, I don't think it's reasonable to say that not being sent the annual statements prevented Mr H from accessing the benefits from the plan.*

*And I don't think Ascot Lloyd delayed Mr H from accessing the benefits after he contacted it. Mr H has kept a timeline of events which notes he started looking for the missing s226 plan in 2018. But he didn't reach out to Ascot Lloyd to establish if it had any information until the middle of 2019. He contacted it again on 29 August 2019 and his notes indicate Ascot Lloyd had made some enquiries at that point. Mr H said he told it he wanted to find out "where my pensions are". And that Aegon had confirmed Ascot Lloyd had the information on the s226 plan and he "wanted to know where the GAR plan was."*

*But at this point Aegon had already confirmed to Mr H it held the "missing" plan. It subsequently wrote to him on 18 September 2019 enclosing the annual statements and said:*

*"With regard to your request concerning the guaranteed annuity rates and how benefits can be taken, a quotation for immediate retirement is being issued separately."*

*Mr H hasn't provided a copy of a quotation from 2019. He says there were some issues in setting up the annuity which wasn't completed until January 2021. On this evidence it seems clear that Mr H had fairly complete details about the plan by September 2019. This included the missing statements and he was in possession of the policy schedule and other details, albeit misplaced in his loft.*

*Mr H's diary note's that on 27 May 2020, Aegon had provided "Confirmation that they are holding pension". It isn't clear if this relates to the s226 plan with the GAR or some other arrangement. Then on 23 June 2020 Mr H spoke with Ascot Lloyd again and his notes say he was trying to find out why it hadn't forwarded benefit statements and why it has taken it so long to respond. I don't think these were issues preventing him from accessing benefits from this plan.*

*Mr H has provided a copy of a retirement illustration pack issued by Aegon on 29 June 2020. It may have been that this was the information Mr H had been waiting for from Aegon referred to in its September 2019 letter. Mr H told our service that L&G (who now provide annuities for Aegon) had been "dragging their feet and not forthcoming with my options". That would seem a long delay, but it wasn't one caused by Ascot Lloyd.*

*Whilst I understand Mr H's frustration about the lack of response from Ascot Lloyd explaining its actions and confirming details about residual commission payments. I think he had the information he required about the missing policy by August /September 2019, so soon after he first contacted Ascot Lloyd about it. So, I don't think it is reasonable to say it has delayed the arrangement of the annuity until 2021 and I don't think it needs to compensate Mr H for any loss of income.*

*However, I do think Mr H has suffered some inconvenience and Ascot Lloyd accepts it could have been more proactive in responding to Mr H's queries. And I appreciate that Mr H might have thought that there were more details or information to be provided about his pension plans. A prompter response might have alleviated such concerns sooner.*

*And I think that if Ascot Lloyd was receiving correspondence for Mr H, which it wouldn't (or couldn't) act on, the reasonable thing for it to have done would be to contact Aegon and ask*

*it to correspond directly with Mr H. So, I think Mr H did suffer some inconvenience over these failings and it's fair that he be compensated for this.*

### **Putting things right**

*I don't think Ascot Lloyd was responsible for any delay in setting up the annuity, so it need take no action in respect of this. And, if it has received commission payment on the Aviva plan, I haven't seen any evidence that it wasn't entitled to receive this, so it need not compensate Mr H in respect of this.*

*But I think the failure to either forward correspondence to Mr H or arrange for it to be sent direct to him and the failure to follow up on his enquires has resulted in some inconvenience. I think it's fair that Ascot Lloyd should pay Mr H £200 compensation in respect of this, an amount in keeping with what our service would award in similar circumstances.*

I asked both parties to send me any further information or comments they would like me to consider.

### **Response to provisional decision**

Ascot Lloyd said it accepted my provisional decision.

Mr H didn't accept my provisional decision and made a number of points. He said he wanted to correct some facts. He said he accepted Ascot Lloyd wasn't responsible for the full delay in him purchasing his annuity, but that they were responsible for some of the delay. In summary:

1. He said he only declined Ascot Lloyds services once, because at the time it told him it would charge around £20,000 for a review, but then in 2019 had said that this first meeting would have been free of charge.
2. He provided various further documents from the time of Ascot Lloyd taking over his old IFA which he felt was "*categoric proof*" that it became his agent in 2014, "*accepting servicing rights.*"
3. He had been proactive in his search for the missing plan in 2017/18, believing it was with Aviva as a totally separate department at Aegon dealt with this type of plan compared to his other arrangements with it.
4. He said "*legally required*" annual summaries hadn't been sent to him for over five years. Had they, financial decisions could have been made on a more-timely basis.
5. Ascot Lloyd should have advised Aegon it wasn't the agent for the plan instead of regularly updating its address with Aegon preventing important data being supplied to Mr H.
6. Ascot Lloyd were "*provably negligent in doing nothing for a period of 18 months*" in misleading Mr H that it knew nothing about the pension plan.
7. That my view that Ascot Lloyd could have been "*more proactive*" in forwarding the statements or advising Aegon it wasn't acting for Mr H meant not providing the statements had affected his financial situation.
8. Mr H said the plan and its benefits were discussed in 2012 and he wanted to keep it open then and pay the small fees for doing so, but that he wasn't aware of who the provider was.
9. He asked for a copy of the valuation report from 2009 (which our service provided).
10. He said he didn't know the plan was with Aegon and the statements would have provided the missing information. He asked if a "*customer must know everything about every one of their pension pots throughout the life*" of the plans. And if so,

what was *“the point of an IFA, pension summaries and laws”* that the customer received regular correspondence from the pension provider.

11. He said he had wanted to draw the pension income and the absence of documentation had delayed this, and Ascot Lloyd and its predecessors held this information. He had told Ascot Lloyd he wanted to draw the income on 29 August 2019.
12. He said setting up the annuity was delayed after he had details of the policy which may have occurred anyway but this had also been delayed because Ascot Lloyd hadn't provided information in the period between 2015-2019.
13. He said that I seemed to consider that as he'd had *“some financial training I should not receive the same degree of service that any other member of the public should get.”* And that he'd been fortunate to be able to put together the information himself. He said the question was whether Ascot Lloyd had *“delayed that process to an ordinary member of the public and this they did in my case for over 5 years despite the fact they were not rehired as my IFA.”*
14. He said he felt that Ascot Lloyd were responsible for around four years of delay as *“you cannot argue against the fact that if I had received the relevant information earlier I would have been in a position to take the guaranteed income”*.
15. He said he remained concerned that *“IFA's can purchase income, assets, business goodwill and customer details off old plans ... but can ignore all linked liabilities ... as such a situation is open to massive abuse”*.

### **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, I've decided to uphold the complaint in part along the lines of my provisional decision.

The role of our service is to resolve complaints impartially, we don't regulate financial businesses, which is the role of the Financial Conduct Authority. When an IFA acquires another firm or client bank of a firm, that is subject to FCA approval and oversight. There's no evidence of any wrongdoing by Ascot Lloyd in respect of this.

I agree that the “marketing” type communications Mr H received at the time do try to give the impression of a seamless takeover with ongoing continuity for clients. And he is correct that there are inconsistencies in its responses to his complaint about details of the takeover and what would happen. However, when Ascot Lloyd took over the previous IFA business (which was subsequently wound up) it didn't acquire a responsibility for the previous advice given. As Mr H has said correspondence after the takeover confirmed the relationship would initially continue as it had before. But it wasn't required to continue to provide Mr H with ongoing services under any previous arrangement and it was free to negotiate new terms if it wanted, just as Mr H was himself.

Mr H says this is wrong and open to abuse, and I can understand why he thinks that. But the position remains that Ascot Lloyd did not have an obligation to him unless he accepted the new terms and conditions that were subsequently proposed by it. And just as Mr H was free to choose who he dealt with, Ascot Lloyd was free to negotiate or renegotiate what terms it was prepared to provide its services on. I think that is the key consideration here and that overarches many of the points Mr H has made.

When Ascot Lloyd offered Mr H new terms and conditions for ongoing services he declined. And he took steps to deal with his one of his arrangements directly with Aegon, but for

whatever reason, not the others. I think this suggests he didn't want to deal with Ascot Lloyd or expect it to act for him. Mr H has provided a copy of an email to his former adviser from May 2016, who had left AL after the takeover of the old IFA. In this Mr H says he'd:

*"Decided not to go with (AL) and am looking for an IFA.  
I'm about to sort my pension this year."*

I do think it would have been better if Ascot Lloyd had been "*pro-active*" and either forwarded correspondence received to Mr H or returned it to Aegon. But, as a matter of courtesy, rather than because I think there was an obligation for Ascot Lloyd to have done so. It may be that had Ascot Lloyd forwarded correspondence or returned it to Aegon any ambiguity over the plan would have been cleared up sooner. But that isn't the same as saying Ascot Lloyd is liable for any potential delay, because I don't think it was.

The onus on issuing pension statements lies with the provider (Aegon) and if had Ascot Lloyd had been aware it was receiving correspondence it wouldn't necessarily have been aware Mr H wasn't being sent copies of whatever was provided to it. And, whilst I appreciate Mr H will find this frustrating, it's unlikely that Ascot Lloyd would be aware of any of the detail of his arrangements once he had declined to become a client. That's because the transfer of existing agencies when an IFA firm is taken over occurs at an agency rather than an individual policy level.

Mr H has said whilst he was aware there was a plan with enhanced benefits, he didn't, in the period 2014-2019, know it was with Aegon (formally Scottish Equitable). However, he says that this plan was discussed in detail in 2012, when he decided against advice to transfer it in view of the valuable benefits it offered, which would be available the following year. He also says he enquired about taking the benefits with the previous IFA subsequent to this before Ascot Lloyd acquired the client bank in 2014, although as noted above he also reached out to the old adviser about the same matter in 2016 advising he was "*about*" to deal with his pensions.

I think it is unlikely that the discussions in 2012 and after with the previous IFA could have taken place without the provider of the plan being identified. And the plan details were also clearly shown on portfolio valuations produced by the previous IFA in 2009, which Ascot Lloyd. There would be little reason to generate such a report if they went being shared with Mr H, although he says he doesn't have a copy of this document. And he has confirmed he subsequently located some details of the plan stored in his loft. So, I think Mr H did have details about the plan which would have helped track it down, albeit not to hand. And that wasn't an issue caused by Ascot Lloyd.

Even if Mr H didn't recall that the plan was with Aegon he knew there was a plan and made some enquiries about it with Aviva and Aegon, he says without success. But he didn't go on to contact Ascot Lloyd about it until 2019. I don't think there was anything preventing him from reaching out to it before then to see if it did have any information. Indeed, he could have asked it for a summary of his arrangements at the time he chose not to accept the new terms and conditions it had proposed. And if he had such limited information on his plans, I'm surprised he didn't request this. But very soon after he did contact it in mid-2019, he was in possession of all the information he required directly from Aegon.

When Mr H did contact Ascot Lloyd, it didn't deal with things very well. But it didn't materially delay the arrangement of the annuity the plan offered. And I think much of Mr H's ongoing queries were related more to his concerns over whether it had received commissions on the plan, which it had not, and the fairness of the takeover and new terms and conditions being put to him. The records Ascot Lloyd has since located didn't provide any information that Mr



H hadn't secured himself within weeks of first contacting Ascot Lloyd, so again this didn't materially delay him from arranging the annuity.

So, taking everything together I don't think Ascot Lloyd is responsible for any delay in Mr H being able to take his benefits from the Aegon plan. But I think it could have handled his enquiries better than it did and that this caused him some inconvenience.

### **Putting things right**

I think it's fair that compensation be paid for the inconvenience caused and that Ascot Lloyd should pay Mr H £200 compensation in respect of this, which is in keeping with what our service would award in similar circumstances.

### **My final decision**

For the reasons I've given above and in my provisional decision, my final decision is that I uphold this complaint against Ascot Lloyd Financial Services Limited.

I direct Ascot Lloyd Financial Services Limited to pay Mr H £200 in compensation distress and inconvenience caused.

Ascot Lloyd Financial Services Limited must pay the compensation within 28 days of the date on which we tell it accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

If considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr H how much it's taken off. It should also give a certificate showing this if Mr H asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 14 February 2023.

Nigel Bracken  
**Ombudsman**