

The complaint

Mr and Mrs B complain that Lyon & Co LLP (“Lyon”) advised them to invest in an unsuitable product, failing to explain the fee structure and wrongfully exposing them to capital gains tax.

Background

I wrote to the parties on 30 April 2024 with my provisional decision in which I set out the complaint background, and my provisional findings, as follows:

What happened

Mr and Mrs B approached Lyon in May 2021. They were both in their mid-eighties. Lyon says as well as phone calls it had seven face-to-face meetings between May 2021 and September 2021 and four in 2022 in January, May, October and November.

Mr and Mrs B had concerns about their ISA provider being taken over. It is agreed they also wanted to simplify their investments. Lyon’s phone note said: *“Make appoint regarding shares & [ISA providers] + other matters”*. Lyon’s 20 May 2021 ‘fact find’ listed the objectives as *“review investments”*, firstly the ISAs, and then to simplify their affairs if possible as they had *“shares and other investments”* but *“they are not sure what they have”*.

According to Lyon’s 8 June 2021 phone note, Mr and Mrs B’s purpose in seeking simplicity was *“to make everything simplistic so that if anything happened to either of them their investments would be easier to understand and manage”*. They had a lot of share certificates and other paperwork for companies - mainly utility companies and sometimes banks. It wasn’t clear which related to live holdings and which did not. It is agreed this was the main area needing consolidation and simplification.

The fact find said Mr and Mrs B’s joint income was £1900 a month and they spent £1000 a month, leaving a £900 surplus. They owned their home and had no inheritance tax liability.

The fact find notes recorded Mr and Mrs B as having more than £100,000 in cash deposits and £37,000 in premium bonds, as well as a £24,000 investment bonds and £10598 in ISAs. It said their shareholdings were worth around £18500. An updated list put this as £62000 for the ISAs, which were in a fixed interest fund, £20,000 in three investment accounts (which may also have been ISAs) invested in a higher income fund, a with-profits investment bond worth £28,000 and £21,000 in shares.

Lyon assessed Mr and Mrs B’s attitude to risk in May 2021. On Mr B’s risk questionnaire he disagreed with being willing to risk a percentage of his income or capital to get a good return on an investment and agreed he would prefer a guaranteed rate of return to uncertainty with his investments. He didn’t agree with accepting potential losses in order to pursue long term investment growth, but he also didn’t agree that he would rather put his money in a bank account than invest in shares and he said he would feel comfortable investing in shares. Overall he saw himself as average and as neither risk averse nor a risk taker. I’ve not seen Mrs B’s answers, which were apparently different but reached the same risk profile result.

In the second part of the risk questionnaire, headed “*Capacity for loss*”, when asked how much of this investment he could afford to lose, Mr B said he couldn’t afford any loss. He said the earliest he planned to take money from the investment was between 1 and 5 years and as a lump sum – and that it is very likely that he would need to take money from the investment earlier than planned – such as in a financial emergency.

A June 2021 “*Client Profile Report*” set out and discussed all this. For Mr B it also set out an example investment breakdown, which included 64% invested in equities with 31% in fixed interest or cash (the remainder in property).

On 9 June 2021 Lyon noted the discretionary manager it was to use for Mr and Mrs B would “*make no charges*” and sell shares for free if existing shares were invested with it (a £25 fee might otherwise be made per share certificate when selling the shares). The discretionary manager told Lyon a minimum of £150,000 was required if there were to be ‘bespoke management’ of a portfolio. Lyon told Mr and Mrs B that day that it would need to send their shares to the discretionary manager to look at and report back.

The discretionary manager checked the share certificates and share paperwork and found about half - around six holdings - to be valid (some holdings were represented by more than one certificate). The other paperwork related to companies that had been taken over or had otherwise ceased to exist.

In June 2021 a 4% initial fee was agreed between Lyon and Mr and Mrs B, and terms of business signed by them. An ISA transfer form was also completed. On 21 June 2021 Lyon told Mr and Mrs B the discretionary manager would cash in all the shares free of charge. Lyon’s phone note said Mr and Mrs B’s premium bonds were also discussed.

On 24 June 2021 Mr and Mrs B were told their ISAs were being transferred. Lyon told them it had opened an account with the discretionary manager. Mr and Mrs B “*agreed it was good to be all in one place*”. Lyon said if the value was over £150,000 it could cancel the separate ISA platform it had set up and just use the discretionary manager.

A joint portfolio application form was signed by Mr and Mrs B in July 2021, with £101,600 entered on it as the investment amount. It stated income wasn’t required from the portfolio. It said the source of funds was existing shares and ISAs built up from savings. It specified Mr and Mrs B’s time horizon as 5-10 years and the initial charge as 4%.

On 21 July 2021 it was noted the premium bonds had been cashed in. On 4 August 2021 it was noted (in a phone note) that the with-profits bond was being cashed in. The note said: “*explained the bond and how it works / client happy to cash in*”.

By August 2021 the portfolio account was set up to be managed to a ‘Diversified Risk’ mandate with an income and growth objective on a discretionary basis. There was also an ISA application form in September 2021 which said the ISAs were to be managed in line with the rest of the portfolio. In December 2021 Lyon confirmed sums of around £176,000 had been invested, including some stock transfers and ISA transfers as well as cash sums.

A September 2021 document had proposed an asset allocation of 51.5% equities, 34% bonds or cash and 14.5% in alternatives (absolute return funds, property and gold). I gather this was a ‘bespoke benchmark’ selected by Lyon. I gather the manager could usually vary from the benchmark equity allocation by plus or minus 7.5%.

Lyon’s suitability report was issued in December 2021. It acknowledged this was a long time after the May 2021 initial exchanges – and it noted a reason for this was difficulties there had been in identifying all Mr and Mrs B’s investments. The report said their highest priority ‘by

far' was to combine some or all of their investments to make their position easier to manage. It also said they wanted to identify all their holdings (which by then had been done). It said their other priorities included *"To improve the returns from your premium bonds without taking undue risk"* and *"To benefit from potential gains available from exposure to stock markets"* and *"To invest for growth in excess of traditional deposit accounts"*.

It said: *"you do not have a firm idea as to the amount of capital you wish to acquire and you do not have a specific term in mind. You also do not have a specific purpose in mind for this investment but instead you are building your capital base in the most tax efficient manner."*

The report said transferring investments to a discretionary portfolio manager would make things easier by putting it all in one place so nothing would be 'lost'. It said Mr and Mrs B's existing investments didn't offer a rebalancing facility, had no strategy and hadn't been tailored to their risk attitude. The report said off-the-shelf portfolios had been discussed but *"it soon became clear that you want something which is more reflective of your own personal needs"*. It didn't say why, except to say *"the only suitable answer is to have a discretionary fund manager create and manage a portfolio specifically for you. It is with this... that we can dispose of your individual shares with no tax implications."* This is what had happened.

According to the report, Mr and Mrs B's existing investments had included two ISAs worth around £62,000 - which from what I've seen were invested in a fixed income fund. There had been around £20,000 in three investment accounts in a higher income fixed interest fund (which could invest up to 60% in non-investment grade bonds). The value of the with-profits bond had been around £28000, their shares had been around £19,000 and their premium bonds had been £50,000. All these sums had been introduced into the portfolio.

The report said premium bonds were far less attractive than they used to be and said these had been discussed *"in context of your attitude to risk"* and Mr and Mrs B had decided to put the money from these into the portfolio *"after due consideration"*. It said the premium bonds *"don't align at all with your risk profile"* and the money was likely to do better in time within the portfolio. It said: *"I recommend that you cash in the premium bonds and reinvest the proceeds in line with my investment recommendations"*.

The report said Mr and Mrs B's shares were worth less than £20,000 and were a real administrative burden. It said moving them to the portfolio would solve this and ensure they could be cashed in with no capital gains tax liability arising. It said the ISAs (of £62000) were being transferred from existing providers due to *"poor service, poor transparency and poor investment performance"*, but gave no examples of these problems. It didn't say that moving them was for simplicity, which was presumably another reason.

The report said the with-profits bond should be cashed because it had been returning less than inflation and *"I would ordinarily consider charges here, but your need for simplification is a higher priority for you"*. It said the three investment accounts (which I believe it later was found were ISAs too, although nothing turns on this) should be moved for simplicity because there were three of them and they were small. It said this advice didn't consider *"investment performance and charges"* because *"your need for simplification is a far higher priority for you"*.

The report said Mr and Mrs B's risk profile was 'Profile 5 – Low medium risk' – which it said was *"about average"* and a matching portfolio would have a mix of assets in it and could go up or down. It would have good potential to beat inflation but could fall in value particularly in the short term. It said Mr and Mrs B had confirmed they were willing and able to accept losses and investment volatility. It said Mr and Mrs B were *"satisfied that the attitude to risk agreed upon is within your stated capacity for loss"*. The report set out an initial portfolio mix of 69% equities, 12.5% alternatives 15.5% bonds and 3% cash.

The report said Mr and Mrs B didn't need income from the portfolio. It repeated the income and spending figures from the earlier fact find. It said the initial fee for Lyon would be 4%, which it said had amounted to £7215 (implying a total investment of around £180,000).

The report said, of the investment term: *"The result of your risk profile report indicated that you are planning to take benefit within 1-5 years. Our discussions therefore clearly indicate that you are investing for the short-term."* It said: *"You will actually be investing for longer than the questionnaire indicates, so my investment solution may have a different asset mix to that shown in the risk report. However your risk categorization remains 'low medium risk'."*

The report also said: *"Generally speaking, the longer you are investing for, the more risk you are able to take. As you are investing for less than 5 years, lower risk investments may be appropriate in order to reduce the risk of short-term falls in the value of your money. It is important to emphasise that this investment should not be used if you are at all likely to cash in very early because you may not then get back the amount you invested."*

The report said Mr and Mrs B, at the end of the period they'd mentioned, intended to access the investment only as and when funds were needed, so some or all of the investment might carry on for longer. It also said Mr and Mrs B said they didn't think it likely they would need to access the investment early as they had other funds for emergencies. It said this could increase the level of investment risk they could afford to take but such risk shouldn't exceed what they were comfortable with.

The suitability report was signed by Mr and Mrs B in December 2021.

On 25 February 2022 the discretionary manager sent a letter explaining the value of the portfolio had dropped by more than 10%. In October 2022 Lyon had a review meeting with Mr and Mrs B and a relative at which they answered the risk questions again. The result was a reduced risk score of 4/10 instead of 5/10. So the portfolio was changed to Portfolio 3.

The discretionary manager in 2022 said Mr and Mrs B had been invested in their Portfolio 4 and had 52% shares, 5% cash, 12% alternatives and 30% fixed interest. After October 2022 it said they were moved to Portfolio 3 which was 36% fixed interest, 6% cash, 39% equity and 19% alternatives. It said it had the ability to move 7.5% either side of these 52% and 39% equity weightings. It said risk level 4/7 allowed equity content of 44.5 to 59.5% but it hadn't exceeded 55%. It said it was important to note that the Alternatives element also had equity exposure although these were designed to obtain returns uncorrelated to equities and bonds. The reduced risk level Portfolio 3 allowed 32.5% to 46.5% shares. The manager said it would manage the capital gains tax position for the clients. It said £44,000 was outside of an ISA (so could generate tax) but it expected to get this inside ISAs in the coming years.

Our investigator looked into Mr and Mrs B's complaint and thought it should be upheld. She thought the fees were sufficiently explained and Lyon's advice took taxation into account. But she thought the recommended investments carried excessive risk and also didn't take into account that Mr and Mrs B's capital was needed within five years.

Our investigator thought Mr and Mrs B's portfolios had more shares and risk assets than suited them, based on their risk questionnaire responses and what they said about needing their money within five years. She said Mr and Mrs B wanted a small risk and their portfolios should be compared to a return of equal parts the FTSE UK Private Investors Income Total Return Index and the average rate from fixed rate bonds. She also proposed that Lyon pay Mr and Mrs B £200 for their distress.

Mr and Mrs B said they accepted our investigator's findings, but they said a poster in Lyon's office said for their level of funds Lyon's fee should've been 3% not the 4% it charged. Also

with those fees and other charges, it would be hard to achieve a return in under five years - so the risk outweighed the potential return. Our investigator said her findings were based on the paperwork provided rather than an office poster. Mr and Mrs B maintained that this sort of investment wasn't suitable for a term of five years or less but accepted the assessment.

Lyon didn't agree with our investigator's assessment. It said the redress benchmark had 20-30% in shares which was too little and less than it would expect for either of the portfolios it had recommended. It said returns had been affected by unforeseen factors such as war, high energy costs and high inflation, so it was unfair to base redress for a medium to long term investment on the first year's performance. It said it had made clear the investment was for the medium to long term and it said short term profit taking was never a requirement. It said passive vehicles had outperformed the discretionary managed products in 2022 but a fair comparison couldn't be made on the basis our investigator was proposing. If the problem was with the investment solution, such a comparison might make sense but as it understood the assessment the problem was not the investment itself. It said comparison with lower risk versions of the same products showed shortfalls of £656 and £625 over this short timescale.

Lyon also said Mr and Mrs B were semi-experienced investors who had self-invested in shares for many years before meeting Lyon. It said risk profile 5 was decided on for each of them having been assessed separately – and four lower risk categories and a 'no-risk' option were also discussed at great length and discounted at the time. It said risk profile 5 wasn't changed because Mr and Mrs B were both happy with it compared to higher and lower risk options and this in no way equates to a 'small risk'.

Lyon says it told Mr and Mrs B its fee would be 4% and it took a lot of work to track down all Mr and Mrs B's holdings. It said it also did capital gains tax calculations for them. They'd originally said their holdings were worth around £100,000 but it turned out nearer £180,000.

Lyon says Mr B's objective *"was to take a single lump sum at between 1-5 years and Mrs B had the same timescale but said the investment should be left alone and [she] would only take money out as needed"*. It says it became clear the likelihood of them needing all the money all at once was *"extremely remote"* and the investment was likely to remain in place for more than 1-5 years and probably for life. It said an emergency fund of £40,000 was kept and Mr and Mrs B's income exceeded their expenditure by £900 each month.

Lyon says it reached its assessment of Mr and Mrs B's risk attitude using an outsourced risk tool, but it discussed the outcome with them. It says they were assessed as low medium risk, or 5/10, and its reports showed 64% being put into equities.

Lyon says the potentially longer-term nature of the portfolios meant varying the asset allocation was considered but it was decided to keep it as it was. It said analysis of Mr and Mrs B's income and expenditure showed they didn't need access to the funds for income. It says due to its discussions with Mr and Mrs B it kept the portfolio underexposed to equities with a remit of 44.5 to 59.5%, but the portfolio was never exposed to more than 55%, which it says is acceptable for a 5/10 risk client. It said at a later review the risk was reduced to level 4 *"lowest medium risk"* with a limit of 46.5% in equities.

Lyon says the portfolio the discretionary manager created was created specifically to match Mr and Mrs B's risk outcome, so the conclusion that this was unsuitable must be wrong. Also asking Lyon to pay redress after such a short investment period is unfair and the calculations proposed by the investigator are on a basis that would never have arisen. It says the 5/10 risk level was arrived at using a widely used industry tool. There's a conversation between adviser and client to finetune the result, but there is otherwise no room for personal opinions or interpretations. The four lower risk definitions available in its tool are 'lowest medium risk', 'low risk', 'very low risk' and 'lowest risk'.

Lyon said there is no way that 5/10 can be defined as a “small” or “insignificant” risk and no adviser would define it as such (our investigator said “small” has an everyday meaning of “insignificant or less than normal”). It said neither of these words appear in the ten definitions of the tool and it is grossly unfair for findings to be based on the investigator’s own subjective definitions. Lyon said the investigator’s findings make no sense and lack sufficient understanding of the risk categories or the tool.

In support of their point about fees, Mr and Mrs B sent a Lyon’s fee sheet showing a charge of 4% for lump sum contributions of up to £100,000 but 3% for sums above this. This didn’t change our investigator’s view. She felt Lyon had explained to Mr and Mrs B its fees. As for Lyon’s points, she noted that a risk tool had been used, but she said Mr and Mrs B had also provided information about their aims, objectives and concerns and she wasn’t persuaded the investment was suitable for their attitude to risk.

Lyon made further points, including that the most important objective was simplification. It said an appropriate risk level was agreed after an extensive discussion. It said Mr and Mrs B didn’t request or used the words ‘low cost’ or ‘secure’. These were the words of their relative bringing the complaint, who attended the review meeting in 2022 but didn’t use those words then either. It said at that time in 2022 a new risk questionnaire was done and discussed and led to an instruction to the discretionary manager to reduce the risk on the investments.

As this matter couldn’t be resolve informally, it has been passed to me to decide.

What I’ve provisionally 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.

From what I’ve seen so far, I’m planning to uphold the complaint. I’ll explain my reasoning.

Mr and Mrs B’s portfolio application form said their intended investment term was five to ten years – or at least this was the box that was ticked. But as far as I can see, there aren’t any records showing that Mr and Mrs B had, prior to that or after it, requested or endorsed the idea of a medium to long term investment horizon with a minimum of five to ten years.

Instead, the evidence we have shows Mr and Mrs B telling Lyon that they might access their investment after as little as one year or during a period of one to five years. It was over this period that they might hold and also might access any investments.

Mr B’s questionnaire at the start said it was likely the funds might be accessed early. But given that the full investment horizon specified was as little as one year, it was already short regardless of whether or not it was shortened further. The later suitability report said Mr and Mrs B didn’t think it likely it would be shortened further, but it said they would be investing for less than five years and were investing for the short-term and were planning to take benefit in one to five years. It didn’t refer to a five to ten year investment horizon.

Mr and Mrs B didn’t expect to need the invested money for anything in particular and didn’t need it for income. Lyon appears to have taken this to mean that the money was available in fact for medium to long term investment and that it could advise on that basis. But I don’t agree. Given Mr and Mrs B’s ages, their circumstances could change quickly and without much warning. So it seems to me that wanting to avoid tying money up and wanting the ability to access it in the short term, was actually consistent with Mr and Mrs B’s situation.

The suitability report did say Mr and Mrs B would invest for longer than their questionnaire had said but it wasn’t more specific than that. This doesn’t make me think, given what I have

overall, that Mr and Mrs B's preferred investment timeframe had changed from what they'd said at the start or that this ought to have been put to one side by Lyon. It seems to me that this was one possibility inferred by Lyon from the circumstances. But plainly there were other possibilities, including that the investment might be accessed within five years as clearly set out and stated in the report and as Mr and Mrs B had said at the start.

Starting new risk investments if the investment term might be less than five years, tends not to be advisable given there is less time to make up the costs of investment and to 'ride out' any downturns that might occur in the short term. So taking out new risk investments or increasing risk exposure in such a situation is a more speculative enterprise.

I note that Lyon told Mr and Mrs B that the portfolio wasn't one they should use if they were at all likely to cash it in "very early", but given the terms mentioned were less than five years and potentially one year, this doesn't in my view show that Lyon made clear to Mr and Mrs B that the portfolio was a medium to long term investment suitable only for investment over terms exceeding five years.

Lyon says Mr and Mrs B confirmed the time horizon was actually open-ended and there wasn't a set date for maturity or encashment. It is plain that the time horizon was uncertain, but this doesn't mean increasing medium to long term investment exposure was advisable. In light of what I've said and noted already, this observation of Lyon doesn't change my view.

Based on the suitability report, the funds that were introduced into the portfolio had originally been held by Mr and Mrs B invested as follows:

Shares = £19000 (11%)
With-profits = £28000 (15%)
Fixed interest - higher income = £20,000 (11%)
Fixed interest = £62,000 (35%)
Cash deposits - premium bonds = £50000 (28%)

These existing assets indicate their past investment approach and experience. They held only a very small part of their savings in shares. Most of their investments were in less risky investments and relatively conservative investments. With-profits funds have some shares but also have certain guarantees or 'smoothing' of returns and so differ from direct stock market investment. Mr and Mrs B apparently had at least another £40,000 in cash, perhaps more, so their shares were an even smaller percentage of that total. On the other hand, if their cash and cash-like savings are ignored and one just looks at the funds and investments they held, their shares made up about 15% of those.

I understand Lyon's position is the benchmark used by the discretionary managed portfolio it recommended was the one set out in September 2021 as:

Shares 51.5%
Alternatives 14.5%
Bonds or cash 34%

I gather the above allowed a plus or minus 7.5% variance. I understand Lyon's position is shares in the mix in fact reached no more than 55%. This is substantially less than in the mixes in either the client profile (64%) or the suitability report (69%). I gather this is because Lyon used a bespoke benchmark. I give Lyon credit for not putting more into shares than it did. But it is apparent that the result of the advice was still to increase very substantially the exposure to shares and to risk overall compared with where Mr and Mrs B were before. In view of what I've said above about their circumstances, the impact of these on the available investment horizon and what Mr and Mrs B had explicitly said about that, I find increasing

the exposure to risk and to shares in this way was not suitable advice for Mr and Mrs B. In my view, with the exception of the individual shareholdings, the investments Mr and Mrs B already had were more suited to their circumstances than the mix recommended by Lyon.

I don't overlook that the suitability report said Mr and Mrs B's objectives included investing in the stock market to improve the returns on their funds. But I've seen nothing to suggest they ever expressed to Lyon any concern about the returns they were receiving or about needing to improve these or needing to do more to beat bank account returns or hedge against inflation. Nor did they have a specific goal or purpose for their investments that wasn't being fulfilled when they approached Lyon. So Mr and Mrs B didn't have any particular reason to risk putting money they might need in the short term into a medium to long term investment. Or to increase the amount of risk their money was exposed to at that time. Everyone would welcome tax efficiency and higher returns, but Mr and Mrs B's particular reason to want their existing arrangements looked at was they wondered whether the takeover of their ISA provider should concern them – and I don't think it should've done - and they wanted also to simplify their investments if they could in case their circumstances suddenly changed.

I note Mr B's risk questionnaire disagreed with accepting losses to seek long term growth and with being willing to risk a percentage of income or capital to get a good return. He agreed he would prefer guaranteed returns to uncertainty. On the other hand, he didn't prefer bank accounts to shares and was comfortable investing in shares. It seems to me this painted a contradictory picture – being reluctant to risk loss but happy to own shares.

In a sense this mix of risk aversion and comfort with shares reflected Mr and Mrs B's existing holdings, so it doesn't in itself make me think these needed to be changed or made riskier. Indeed Mr and Mrs B's wish to alter things was for simplification rather than dissatisfaction with the underlying investments.

But in view of the contradictions within it, the risk assessment didn't in my view offer on its own a compelling case for concluding Mr and Mrs B weren't taking enough risk and needed to take more. In my view the contradictions meant more weight needed to be given by Lyon to Mr and Mrs B's broader circumstances. Most important of those was that Mr and Mrs B weren't confident committing money to the medium to long term and weren't seeking higher returns or more risk but simplification. The desire for simplification was consistent with their broader circumstances. In contrast at their ages, their mid-eighties, it wasn't an obvious time for them to start taking more investment risk than before (perhaps than ever before) and they had no underlying financial objectives or goals to explain the need for such a departure. So what Lyon advised wasn't consistent with Mr and Mrs B's circumstances in my view.

In my view Lyon's advice changed Mr and Mrs B's overall investment mix in a way that wasn't suitable. Their circumstances – and in particular the investment term - were such that starting new investments, especially medium to long term ones, wasn't likely to be a good idea and the costs risked being detrimental over a short time horizon. So while I agree with Lyon that Mr and Mrs B didn't request secure investments and cost wasn't raised by them as a priority, this doesn't persuade me that what Lyon advised them to do was suitable.

Having concluded that Lyon's advice was unsuitable, I've considered what Mr and Mrs B might've done instead on suitable advice - to identify a fair way to assess any loss.

I agree that checking whether existing investments remained suitable for Mr and Mrs B was the right thing for Lyon to do. But it follows from what I've said above that I don't agree that cash-like risk-free investments like premium bonds were unsuitable in their circumstances. The fact the risk appetite questionnaire identified Mr and Mrs B as having some appetite for risk wasn't in my view a reason to suggest that they put more cash or cash-like savings into risk investments at that point. A risk-free product was entirely in keeping with their situation

and objectives, given its accessibility and simplicity.

So insofar as the portfolio was funded from cash or from the surrender of premium bonds, my view is that its performance should be compared to that of the average rate for fixed rate bonds to assess the extent of any loss. This represents in my view a reasonable proxy for the return they might've received on their premium bonds or on similar cash-like deposit investments. I gather this accounts for £50,000 of the portfolio.

Mr and Mrs B's investment affairs were plainly in need of organisation and consolidation – given that they weren't able to identify all their investments at first or identify what papers related to shareholdings that were still valid. Once their investments had been identified, I'm persuaded on balance something more was needed to make those more manageable as far as the individual shareholdings were concerned. This was clearly flagged in the suitability letter as the particular area causing Mr and Mrs B administrative problems. It seems this was the area Mr and Mrs B had in mind in particular when asking Lyon to simplify their affairs.

But Mr and Mrs B's other investments amounted to a with-profits bond with one company and holdings in two investment funds with two other companies. They had more than one holding in each of these two funds – partly because ISAs have to be held individually. So in one fund they had two holdings - ISAs - and in the other fund they had three. Consolidation and simplification of these could arguably have been achieved by simply making a note of the holdings for Mr and Mrs B to keep. An alternative would've been to register the holdings on an investment platform if there was one that could hold them all. But the investments themselves in my view didn't need to be changed.

I say this given that the funds invested in fixed interest assets and the with-profits bond did not invest in shares directly but had smoothing of returns and certain guarantees. So these were all relatively low risk and in my view it wouldn't have been unsuitable for Mr and Mrs B to keep them even if access to them might be required soon. Also they were already in force, so there were no reinvestment costs involved with that. Lyon said the with-profits bond's recent returns had been low. I don't have reason to doubt this. But given the costs and the potentially short investment horizon to recover those costs, I'm not persuaded that this made surrendering and reinvesting the bond a suitable course of action.

So when modelling the position Mr and Mrs B might've been in upon appropriate advice, I think it reasonable to proceed on the basis that the with-profits bond might've been retained. That said, to assist with the redress calculation and for simplicity, I propose it be assumed the returns from the bond would've matched those of the average fixed-rate bond return too. In my view this is a reasonable proxy given what was recorded about the recent returns. I've not seen anything to suggest that reinstating the bond instead or attempting to reconstruct its returns more precisely is necessary for a fair and reasonable outcome here. I gather this part accounted for something like £28,000 of the portfolio.

For the fixed interest investments, I've noted that these could've been kept as they were or moved onto an investment platform. Either way, upon suitable advice I believe Mr and Mrs B would've held onto those funds.

Also I note that market movements affected fixed interest investments as well as shares in the period in question. So in my view it is fair and reasonable to try to accommodate that within the redress benchmark when assessing what Mr and Mrs B's returns might've been upon suitable advice.

So I think it fair and reasonable to compare the part of the portfolio made up from the fixed interest funds with the actual return those funds would've produced instead. This will involve Lyon finding out and using the performance of those two funds, but I don't believe this would

be too onerous or significantly more onerous than using a fixed interest benchmark. The income payments from the funds need to be added but an accumulation unit return can be used for simplicity if it is available.

Returning to the individual shareholdings, the use of the discretionary manager helped with checking the share certificates. This administrative assistance was of value. It also saved on a £25 per certificate charge that might otherwise have been incurred on selling the shares, but this saving needs to be considered against the costs of the discretionary service. I note in passing that these checking services weren't of use for the other elements introduced into the portfolio, and so only helped with around £19000 of the portfolio. The portfolio service did allow any capital gains tax to be managed by the discretionary manager. But the capital gains tax allowance at the time was £12300 so, given the total value of the shares, any gains on them appear to have been easily manageable within available allowances without the use of discretionary investment management.

Also I note that such management wasn't practical for only a small £19000 investment – and I've explained I'm not persuaded the remit Lyon gave the investment manager was suitable and not persuaded it was necessary to alter most of the other investments. So it seems to me that upon appropriate advice a discretionary manager wouldn't have been used to manage the share portfolio alone. Consolidation could've been achieved instead by registering the existing holdings on an investment platform of some kind. This wouldn't have saved the £25 per certificate cost, but this wasn't in itself sufficient reason to use the portfolio service and the discretionary portfolio service would've been more expensive overall than using an investment platform that didn't include the cost of discretionary management.

It seems to me that having set up an account of some kind to hold the shares, it wouldn't have been wrong to sell the shares for cash. I'm not persuaded there was a tax issue preventing such a sale or that needed special management. But there isn't anything to suggest that Mr and Mrs B wished to give up these shares for reasons of risk rather than for reasons of administrative convenience. So if Mr and Mrs B wished to keep this exposure, I don't see that it would've been wrong – given the small proportion of their assets this represented and the fact they already owned the shares.

So insofar as the portfolio was funded by the sale of the shares, I think it would be fair to compare its performance with something that represents the performance of those shares. For simplicity I propose a return equal to that from a low cost FTSE 100 tracker fund be used. I suggest this also bearing in mind that there may have been concern about having too much in a small number of shares if these had been retained, so it wouldn't have been wrong to diversify these. Using a FTSE 100 tracker for this wouldn't have increased the equity exposure overall, would've reduced overall risk and also simplified things. Such funds have low charges, which is also relevant given a potentially short investment horizon.

On this basis the benchmark I'm proposing has 11% equity rather than the 20-30% proposed by our investigator, but this reflects Mr and Mrs B's position going into the advice. For the reasons I've already given, I don't see a good reason to have advised them to increase this. Also this benchmark has more exposure to the actual price movement of fixed interest bonds such as corporate bonds and sovereign bonds, to be fair to all parties.

Lyon charged around £7000 for its advice (deducted from the portfolio). It wouldn't be fair for it to keep charges for advice that wasn't suitable. For example it charged £2000 for advice to move the premium bond money into the portfolio, around £1000 for advice to cash in the with-profits bond and around £3000 to sell the fixed interest bond funds. I'm not persuaded any of this needed to happen. As I've explained, these were lower risk investments suitable for shorter investment periods and replacing them with new assets wasn't worthwhile given a potentially short investment horizon. So I don't agree there was a need for active rebalancing or active management of the kind offered by the portfolio.

That said, I accept that if Lyon hadn't used the discretionary manager to check the shares, it would've needed to charge for that work. So on balance I think it fair that Lyon is allowed the 4% charge it agreed with Mr and Mrs B as far as the individual share element of the portfolio is concerned. On a share value of £19,000, this would be something approaching £800.

Also it appears there would've been costs for registering or selling the shares if this hadn't been done by the discretionary manager. At a cost of £25 per share and with something like ten valid share certificates, this might've cost something approaching £300.

So I propose that £1100 should be deducted from the 'fair value' figure in the calculation as a broad estimate of the cost of the administrative work that Lyon usefully carried out for Mr and Mrs Lyon on their shares and the administrative cost savings they gained from the discretionary service. I suggest this is a fair and reasonable figure to reflect the sort of costs Mr and Mrs B would've had to pay anyway for Lyon checking, consolidating and simplifying the shareholdings.

I've seen nothing to suggest Mr and Mrs B suffered distress due to these events, but it seems to me the matter caused them inconvenience, so Lyon should pay them £150 for that.

- Provisional decision text ends.

Mr and Mrs B accepted my provisional findings. Lyon replied with further points. It said, in brief summary:

- Mr and Mrs B had cash available and did not need to withdraw money.
- Lyon's risk tool takes account of all factors noted on the questionnaire. Lyon doesn't feel the risk was wrong or the investment, which was aligned to the risk. Mr and Mrs B were happy with and understood the risk
- Mr and Mrs B were happy with Lyon and it was only when their relative got involved that things changed. He filled in the new risk questionnaire with them. He wanted control and wanted to move them to different financial manager. He was unhappy with them for not going to him from the start. He was forceful and abrupt with them and with Lyon and they were very upset by him. Lyon believes Mr and Mrs B did move to that other manager.
- Mr and Mrs B closed the portfolio on 31 January 2024 and £159085 was paid out. Had they kept the portfolio, the value would've been £171929 now (on around 10 June 2024).

As the matter couldn't be resolved informally, it has been passed back 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, I've come to the same conclusions as in my provisional decision and for the same reasons. I've addressed below, briefly the points Lyon has raised.

I accept Mr and Mrs B didn't expect to need the invested money for anything in particular – in part because they had other funds. But they also specified a short investment horizon of less than five years and in their circumstances their situation could change quickly. So in my view a desire not to tie up their money was consistent with their circumstances. I remain of the view that starting new and additional medium term risk investments wasn't suitable in the light of this, and the costs also risked being detrimental over a short time horizon.

What I've said above about the investment term is enough to find Lyon's advice to invest new money into risk investments unsuitable. But my view is reinforced by the contradictions in the risk assessment answers which in my view meant the assessment didn't provide good grounds for concluding Mr and Mrs B weren't taking enough risk and needed to take more. Mr and Mrs B approached Lyon wanting to simplify their affairs. Lyon's advice significantly increased their overall exposure to risk assets like shares in a way that in my view wasn't congruent with their past investment experience or their present circumstances.

I have carefully considered Lyon's point about the involvement of Mr and Mrs B's relative, but I've arrived at my view based on the information collected by Lyon before that relative became involved. It may be that Mr and Mrs B wouldn't have queried the arrangements or moved from them had it not been for their relative, but the conclusions I've reached above indicate there were good reasons to question whether the changes to Mr and Mrs B's situation made by Lyon suited their circumstances and requirements as disclosed by them at the outset before their relative become involved.

Also I note the portfolio value would've recovered significantly had Mr and Mrs B kept it for longer, but in my view it was reasonable for them to end the arrangement when they did given what I've said above about its unsuitability. In my view the cause of Mr and Mrs B's losses was the investment advice given at the outset rather than the steps Mr and Mrs B took later in response to this, like closing the portfolio.

So, for these reasons and those I gave in my provisional decision, I uphold the complaint. I've explained below how matters should be put right.

Putting things right

Fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mr and Mrs B as close to the position they would probably now be in if they had not been given unsuitable advice.

I think Mr and Mrs B would have retained their with-profits bond, premium bonds and the fixed interest funds they held - and would've dealt with their shareholdings differently if it hadn't been for Lyon's failings. It isn't possible to say precisely how all this would've been done, but I am satisfied that what I have set out below is fair and reasonable given Mr and Mrs B's circumstances and objectives when they invested.

I understand from Lyon that the portfolio ended on 31 January 2024 and so is no longer in force. As such Mr and Mrs B's loss crystallised when the portfolio ended. So, in line with our usual approach set out on our website, I find it appropriate that any loss arising has simple interest added at the gross rate of 8% from that date until the date the redress is paid.

What should Lyon do?

To compensate Mr and Mrs B fairly, Lyon must:

- Compare the actual value of Mr and Mrs B's combined portfolio on its end date (which I gather was £159085 and 31 January 2024) with the value Mr and Mrs B would've had on that date if the constituent portfolio elements had performed in line with the benchmarks specified below, and then had an allowance for costs deducted as detailed further below. If the adjusted benchmark value (or 'fair value') is higher than the actual portfolio value, the difference would be the loss and the compensation payable to Mr and Mrs B.
- Lyon should also add interest set out below to any compensation payable. Income tax may be payable on any interest awarded.

Portfolio element	Benchmark	From ("start date")	To ("end date")	Interest on any loss
Money from the with-profits bond	average rate from fixed rate bonds	date the with-profits bond was surrendered	portfolio end date	8% simple per year on any loss from the end date to the date of settlement
Money from the premium bonds	average rate from fixed rate bonds	date these funds were paid into the portfolio	portfolio end date	
Money from the two fixed interest funds	return if the money had stayed in its respective fixed interest fund	the surrender date of the relevant fixed interest fund	portfolio end date	
Money from individual shareholdings	return of a low cost FTSE 100 tracker fund (accumulation units)	date each shareholding was transferred into the portfolio	portfolio end date	

- Separately, Lyon should pay Mr and Mrs B £150 for inconvenience this matter caused.

Actual value

This means the actual amount payable from the combined portfolio at the end date.

Fair value

This is what the combined portfolio would've been worth at the end date had it produced the sum of the benchmark values in the table above, after an adjustment for costs set out below.

I understand no income or withdrawals were paid out from the combined portfolio before the end date, but if that is wrong and there have been payments out, these should be attributed to and deducted from the various portfolio elements above on the date the payment was paid and on a pro-rata basis based on the total value paid into each element at the start (which is simpler than using the relative values of each element at the time of each payment, but that could be used instead) so it ceases to accrue any return in the calculation from that point on.

To keep calculations even simpler, I'll also accept if Lyon totals any payments out and deducts them all at the end to determine the fair value instead of deducting periodically.

Any sum paid into the portfolio should be added to the relevant part of the *fair value* calculation from the point in time when it was actually paid in, surrendered or transferred in (as applicable, as explained and specified in the table above).

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, Lyon should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the portfolio elements on an annually compounded basis.

To complete the *fair value* calculation, the value arrived at above as at the end date should be reduced by £1100 (which is the allowance for fees and costs referred to further above).

Interest should then be paid on any loss found, as set out above.

Lyon should also pay Mr and Mrs B £150 for the inconvenience its failings caused them.

Why is this remedy suitable?

I have chosen this method of compensation because:

- Mr and Mrs B would've continued to receive returns on their invested money had they received appropriate advice. The benchmarks above represent reasonable proxies for those various returns which are explained in more detail further above.
- The average rate for the fixed rate bonds is a fair measure of the possible return on premium bonds, cash and the with-profits policy Mr and Mrs B had.
- The actual returns the surrendered fixed-interest funds would've achieved had they not been surrendered, is what Mr and Mrs B would've received on those funds had they not been introduced into the portfolio, so it is an appropriate measure of those returns.
- The return on a low cost FTSE 100 tracker fund would be a fair measure for the return Mr and Mrs B might've got on their investments in individual shareholdings if those shareholdings hadn't been transferred to the portfolio.
- I consider the above in combination broadly reflects the sort of return Mr and Mrs B could have obtained from their investments had they not received inappropriate advice to invest in the discretionary portfolio at an unsuitably high level of risk. In this regard I note that neither party has suggested the proxies or measures I've outlined aren't fair proxies or measures of the investment returns they are intended to represent (or suggested any alternatives).
- The interest on any loss is for being deprived of the use of any compensation money since the end date.

My final decision

I uphold the complaint. My decision is that Lyon & Co LLP should pay the amount calculated as set out above.

Lyon & Co LLP should provide details of its calculation to Mr and Mrs B in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs B to accept or reject my decision before 20 July 2024.

Richard Sheridan
Ombudsman