

## The complaint

Mr D complained that Capital Professional Limited trading as Ascot Lloyd (Ascot Lloyd) gave him unsuitable advice to transfer the benefits from his two former defined benefit Occupational Pension Schemes (OPS) to a flexi-access drawdown arrangement.

Ascot Lloyd upheld the complaint. It then employed an independent actuary to assess whether Mr D had been financially disadvantaged. That assessment concluded that he hadn't lost out.

After Mr D received the loss assessment report, he brought his complaint to this service as he doesn't consider that the assessment was fair.

Mr D is represented in his complaint. But I'll only refer to him in my decision.

## What happened

Mr D had deferred benefits in an OPS from his employment with an employer I'll refer to as employer X. He also had deferred benefits in an OPS from his employment with an employer I'll refer to as employer Y.

Mr D said that shortly before his 55th birthday he'd contacted Ascot Lloyd about his pensions. He said he wanted to get access to some of his pensions and tax-free cash to help out with some debts, home improvements and a potential wedding.

After a number of meetings with Mr D, Ascot Lloyd advised Mr D in October 2016 to transfer the deferred benefits from both of his OPSs to a flexi-access drawdown arrangement.

Ascot Lloyd produced its suitability report on 27 October 2016. This listed Mr D's main needs and priorities as:

1. *Review existing [OPSs] and realise the true cash value.*
2. *Gain access to your maximum Tax Free Cash on your 55<sup>th</sup> birthday.*

It recommended that Mr D transferred his OPSs into a flexi-access drawdown arrangement. It said this would allow him to access a higher tax-free lump sum. And that it would also give him control of his investments, income flexibility when he needed it, and better death benefits.

The report stated:

*You are aware that once you gain access to your tax free cash you are reducing your fund value.*

The report also noted that Mr D required a tax-free lump sum of £77,256.64 from his pension plan.

Page 9 of the suitability report covered "Income level". It said that after a tax free lump sum

of £77,256.64, the remaining fund in flexi-access drawdown would amount to £231,769.94 as at 13 October 2016. It then stated:

*As a guide we recommend a withdrawal not exceeding 5% of the capital to maintain the value of the fund. You confirmed that you do not require an income at present.*

The report also noted how important it was to regularly review Mr D's financial arrangements.

Mr D agreed to the recommendation. He transferred a total of £309,026.08 into a flexi-access drawdown arrangement in late 2016. £148,249.86 of this was from his OPS with employer Y and £160,776.72 was from his OPS with employer X.

Ascot Lloyd provided the following timeline:

20 May 2017 - Regular monthly income withdrawals of £1,250 each month (gross) started.

6 November 2017 – The adviser issued a review letter asking for a meeting with Mr D.

9 January 2018 – A review meeting took place. Mr D and his wife wanted to take an additional £300 each month in April 2018.

*April 2018*

Ascot Lloyd said it received a notification from the drawdown provider that Mr D had withdrawn a further lump sum from his plan. It said it hadn't provided any advice. The adviser issued a review letter asking for a meeting with Mr D but no contact was established.

5 October 2018 – The adviser issued another review letter asking for a meeting with Mr D. But again no contact was established.

15 November 2018 – The adviser noted the recent high level of withdrawals from the drawdown plan. He wrote to Mr D to invite him to have a review meeting.

29 November 2018 – Mr D cancelled the arranged review meeting at short notice.

8 February 2019 – Mr D cancelled another appointment. But said he would call to rearrange.

10 June 2019 – The adviser issued another review letter asking for a meeting with Mr D.

19 July 2019 – The adviser met with Mr D.

8 January 2020 - The adviser issued another review letter asking for a meeting with Mr D.

25 March 2020 - Mr D requested another review by the end of May 2020.

4 May 2020 - The adviser issued another review letter asking for a meeting with Mr D. But again but no contact was established.

9 November 2020 – Mr D confirmed by phone that he didn't need a review at that time and would rather it be deferred for six months.

8 November 2021 – A meeting was arranged for 2 December 2021.

19 April 2022 – The adviser called Mr D to arrange an annual review, but he declined.

In 2022, Mr D complained to Ascot Lloyd as he felt that the advice had been unsuitable.

Ascot Lloyd produced its final response to the complaint on 25 October 2022, but I understand that Mr D didn't receive this until 28 September 2023. Ascot Lloyd upheld the complaint and said it would assess any financial loss Mr D may have incurred due to the unsuitable advice. It said that it had tried to meet with Mr D, but it hadn't been able to provide him with any advice since July 2019. Therefore it also offered to refund advice fees that had been deducted from Mr D's pension between August 2019 and August 2022. It also stopped any further advice fees.

Ascot Lloyd appointed an independent actuary. It then took some time to gather all of the information required to complete the loss assessment. A loss assessment report was produced on 19 September 2023. Ascot Lloyd shared the report with Mr D on 28 September 2023. It said that the loss assessment showed that Mr D hadn't been disadvantaged. Ascot Lloyd acknowledged that the process may have caused Mr D some upset and offered him £100 for that.

Unhappy with Ascot Lloyd's response, Mr D referred his complaint to this service in October 2023. He said it'd been obvious to his adviser that he hadn't understood the details of the advice. But that he had understood that he'd be able to get more cash if he transferred than he'd get from either of the OPSs. Therefore he felt the advice had sounded reasonable.

Mr D said that because of the advice, he had now effectively run out of money. He said that he was currently undergoing serious medical treatment and that he needed to avoid this added stress. Mr D said he was distraught knowing that he didn't have any remaining pensions to look after him and his wife. He said he had no other savings.

Mr D said he couldn't understand why the calculations assumed that he wouldn't have taken his pension with employer X until he was 65. He said the whole point of speaking to the adviser in 2016 was because he needed cash and income when he was 55.

Mr D told this service that he'd been permanently employed since the time of the advice. He said he'd spent some of his pension funds on a home conversion, paid off debts and financed a vehicle. He said he'd used most of the funds to supplement his income.

Our investigator felt that the loss assessment had been completed correctly. He was also satisfied that the independent actuary had carried out the assessment following the method set out by the FCA.

Mr D didn't agree with our investigator. Many of the points he made were about the unsuitable nature of the advice, which is not in dispute. He made the following points about the compensation:

- He was astonished that our investigator felt that £100 compensation was sufficient for the severe distress he'd suffered because of the unsuitable advice.
- The complaint had been ongoing since July 2022. It'd taken Mr D a great deal of time and effort to get Ascot Lloyd to respond to his complaint.
- In its October 2022 final response, Ascot Lloyd had agreed to refund charges, but it was yet to do so.
- He said that no allowance had been made for the additional tax he'd had to pay. And that but for the unsuitable advice, the extra tax wouldn't have been payable.

Mr D also made the following points about the loss assessment:

- He wanted to be put back into the position he would've been in but for the unsuitable advice. He felt the loss calculation made no attempt to minimise the harm caused by the poor advice. He said that he would now suffer sustained poverty, which he wouldn't have suffered but for the unsuitable advice.
- He said Ascot Lloyd had asked him in December 2022 whether the compensation calculation should be performed on the basis in force at that time or the new basis that was being introduced in April 2023. And that he'd confirmed that he didn't want to wait. He said Ascot Lloyd had agreed. He therefore felt that the calculation should be performed on the basis in force as at December 2022. But he said that the independent actuary's assessment had used the basis in force at September 2023, not the agreed basis. He wanted to know why it hadn't used the agreed basis and what the results would've been on that basis. He also questioned why it had taken nine months for the calculations to be carried out. He said he'd not received any updates from Ascot Lloyd or the independent actuary over this period and wanted to know why.
- He felt the assessment didn't take account of the actual human factors or cost. He didn't think that the loss assessment should be the sole factor in determining a fair outcome.
- Mr D wanted to know why the loss assessment had assumed that he'd have taken his retirement benefits at their normal retirement dates of 60 and 65 respectively. He said that he'd asked for advice because he wanted to take immediate benefits. Therefore he felt the assumption should've been that he'd taken his benefits from age 55.
- He also wanted to know why the independent actuary had assumed that basic rate tax would be paid, given this wasn't what had actually happened.
- Mr D proposed an alternative loss assessment which he felt would be fairer in the circumstances of his complaint.

Our investigator apologised for failing to comment on the £100 compensation Ascot Lloyd had offered Mr D for the distress the situation had caused. He also considered Mr D's points. He issued an updated view.

Our investigator felt that Ascot Lloyd's offer of £100 was fair. He said that once it had received the loss assessment, it was satisfied that Mr D hadn't been financially disadvantaged. But it also acknowledged that some upset had been caused and therefore offered £100 as a gesture of goodwill.

Our investigator maintained that Ascot Lloyd had adopted a fair and reasonable approach by consulting an independent expert for the loss assessment. He also still felt that the independent actuary's calculations were fair and that they'd been carried out in accordance with the regulator's guidelines. Therefore he didn't consider it would be reasonable to ask the independent expert to run the loss calculations again on a different basis proposed by Mr D.

Mr D still felt that the loss calculations weren't correct because the assumptions used were wrong and didn't comply with what had been agreed. He also still wanted our investigator to address the fact that Ascot Lloyd had failed to refund the charges as it had promised.

Our investigator shared Mr D's comments with Ascot Lloyd for its comments. He asked it to put Mr D's questions about the loss assessment assumptions to the independent actuary.

Ascot Lloyd acknowledged that it had yet to refund the promised fees to Mr D. It asked our investigator if it should arrange payment.

On 12 April 2024, the independent actuary who'd completed the loss assessment responded to Mr D's points. He said he'd reviewed the comments made about the calculations and had concluded that they didn't change the outcome of this case.

The independent actuary responded individually to each of Mr D's loss assessment points. He was satisfied that the calculation had been carried out correctly and in line with the regulator's requirements. He acknowledged that the calculation could've been done assuming retirement at age 55. But explained that the impact of allowing for retirement at age 55 was more likely to result in a larger overall "gain" than an overall loss. Our investigator shared the actuary's full response with Mr D on 16 April 2024.

Ascot Lloyd wrote to Mr D on 16 April 2024 to ask him for his account details so that it could pay him the promised fee refund, plus interest at 8% each day.

Mr D acknowledged that Ascot Lloyd had agreed to keep its promise to refund fees and said that this aspect of his complaint was now settled. But he still felt that the calculation wasn't fair in the circumstances of his complaint. He still held Ascot Lloyd responsible for his bleak financial future.

Mr D made further points about the additional tax he'd paid, compared with what he would've paid but for the advice. He still didn't agree that the independent actuary had used the correct assumption under the circumstances.

Our investigator acknowledged the understandable upset caused by the prospect of a substantially lower pension in Mr D's future retirement, compared to what he would've received if he hadn't transferred his OPSs. But he felt that Ascot Lloyd had taken reasonable steps to put things right. He said the industry regulator sets out clearly how it expects businesses to calculate any financial loss.

Mr D said that he felt Ascot Lloyd's complaint handling process was inept. He felt it was inexcusable to promise a methodology basis, not fulfil that promise and then provide no explanation whatsoever of why the methodology had changed. He also said that he'd had to constantly chase Ascot Lloyd. He therefore didn't think that a token payment was due for the considerable distress and inconvenience caused not only by the mis-sale, but by Ascot Lloyd's failure to keep him updated throughout the process and only responding when repeatedly chased.

Mr D still felt that the loss assessment should've allowed for retirement at age 55. He felt that the calculations should therefore be run again. He also still felt that, as he'd been taxed as a higher rate taxpayer for a substantial portion of the income he'd taken from his pension, the tax assumption used for the calculation was incorrect.

Mr D said that if Ascot Lloyd had advised him to take the tax-free cash he'd wanted and then buy an annuity, he wouldn't now be in this position. Alternatively, if it'd advised him to take the benefits from his OPSs he wouldn't be in this situation. He acknowledged that the income he'd drawn down hadn't been sustainable. But he said he hadn't used the funds wastefully. He'd simply not understood the lifetime impact. He felt this should've been obvious from the start to Ascot Lloyd.

As agreement couldn't be reached, the complaint came to me for a review.

I issued my first provisional decision on 9 August 2024. It said:

*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 intend to uphold it. Although I agree with our investigator that Ascot Lloyd has already carried out a fair loss assessment, I consider that more compensation for distress and inconvenience would be appropriate. I know the fact that I'm satisfied with the existing loss assessment will be extremely disappointing for Mr D. I'll explain the reasons for my decision.*

*Before I start, I'd like to acknowledge that Mr D has been very ill. I hope his health is improving.*

*I first considered the loss assessment. In line with our investigator, I'm not going to review the suitability of the advice Ascot Lloyd provided Mr D as that has already been acknowledged as unsuitable. Instead, I'm going to review the loss assessment completed by the independent actuary to ensure that it was completed correctly and in line with FCA guidance.*

#### *Loss assessment*

*I considered what this service would've required Ascot Lloyd to do in respect of the unsuitable advice, had it not already taken the steps it has taken.*

*This service would've required Ascot Lloyd to undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in Policy Statement PS22/13 and set out in the regulator's handbook in DISP App 4. The calculation would've had to be carried out using the most recent financial assumptions in line with PS22/13 and DISP App 4.*

*Based on what I've seen of the loss calculation produced by the independent actuary, Ascot Lloyd has already taken these steps. But the redress calculation didn't indicate any loss.*

*Our investigator has already noted that this service is unable to check the method carried out by the independent actuary. But I can and have checked the inputs. I've not found any evidence that these weren't correct.*

*I can also review whether or not the calculation has been carried out in line with the guidance under DISP App4. Mr D has made a number of points about why he disagrees with the assumptions used in the calculation. I'm satisfied that these points have been fully addressed by the independent actuary's April 2024 response, which has been shared in full with Mr D.*

*I'm therefore satisfied that the assumptions used were reasonable, and that even if the calculation were run again allowing for retirement at age 55, it would still show an overall gain, and no loss to Mr D. Therefore I'm not persuaded that Ascot Lloyd should be required to re-run the calculation.*

*Having reviewed whether the calculation was carried out in line with the rules, and having considered all of Mr D's points on the calculation, and the independent actuary's responses, I'm satisfied that this guidance was followed.*

*I acknowledge that Mr D would like this service to require a different calculation. But we're not the regulator, and we can't reasonably recommend a different approach to the one the regulator requires. I say this because the formula used for redress calculations is prescribed by the FCA and is the same for all consumers. In its policy statement PS22/13 (1.7), the FCA states the methodology is comparable to how a court would award damages in similar circumstances.*

*I next considered the tax points Mr D has raised.*

*Tax*

*Mr D feels that no allowance has been made in the calculations for the additional tax he'd had to pay because of the unsuitable advice.*

*I acknowledge that Mr D has paid higher rate tax on some of his pension withdrawals.*

*The independent actuary has provided a full explanation, which has been shared with Mr D, about why the loss calculation reasonably used the assumption of basic rate tax. I'm satisfied that this shows the assumption used in the loss calculation was fair and reasonable, and in line with the regulator's rules.*

*From what I can see, after taking all of his tax-free cash allowance from his pension, Mr D then took a significant number of additional ad hoc withdrawals from his drawdown plan without taking advice from Ascot Lloyd.*

*I'm satisfied that the evidence shows that Ascot Lloyd attempted to hold reviews with Mr D. But that he didn't always agree to them.*

*Ascot Lloyd said that Mr D received an additional tax bill because he made regular and ad hoc withdrawals from his plan. It said some of those withdrawals were made after discussions with his adviser. And that in those instances, when tax was payable, it provided Mr D with gross and net of tax amounts. But it said that the majority of Mr D's withdrawals had been made directly through his drawdown provider. Therefore it couldn't confirm exactly what Mr D had been told about the tax that would've been due on these withdrawals.*

*Based on what I've seen, I'm persuaded that Ascot Lloyd isn't responsible for any additional tax Mr D may have paid. I say this because it had no control over what withdrawals Mr D made. And the evidence shows that he didn't often contact it for advice on his withdrawals.*

*I next considered Mr D's point about what should've happened.*

*What Mr D feels should've happened*

*Mr D said that if Ascot Lloyd had advised him to stay with his OPSs, or to take his tax-free cash and then buy an annuity, he wouldn't now be in this position.*

*I agree with this point. However, in either of the alternative scenarios, Mr D wouldn't have been able to receive income of more than £300K, as he has done.*

*Mr D felt that he'd drawn down an unsustainable amount of income because he'd not understood the lifetime impact. He felt this should've been obvious from the start to Ascot Lloyd.*

*The evidence shows that in its 27 October 2016 suitability report, Ascot Lloyd noted that Mr D was aware that if he took his tax-free cash, he'd reduce his fund value.*

*The suitability report also noted that Ascot Lloyd didn't recommend a withdrawal which exceeded 5% of the value of the fund, to maintain its value. It went on to state that Mr D didn't need an income yet. But he started to take an income only a few months' later.*

*The report also noted how important it was to regularly review Mr D's financial arrangements. But the evidence shows that Mr D rarely agreed to a review meeting, choosing instead to make ad hoc withdrawals without advice.*

*Ascot Lloyd said that, at the time of the original advice in 2016, it considered that Mr D had sufficient funds to cover his income through retirement. But that the levels of withdrawals he has subsequently taken were unsustainable. It also said that those withdrawals were significantly greater than would've been payable from his OPSs. It said it had told Mr D this on a number of occasions.*

*I acknowledge that effectively, the unsuitable advice enabled Mr D to take an unsustainable level of income from his plan. But I'm persuaded that the evidence shows that Ascot Lloyd did make Mr D aware that his withdrawals needed to be moderated. The evidence also shows that Mr D withdrew more than the recommended tax-free cash, and started income withdrawals before he said he'd planned to. And that he made a large number of ad hoc withdrawals without seeking advice. Therefore I can't reasonably hold Ascot Lloyd responsible for Mr D's decision to withdraw an unsustainable amount of income from his pension.*

*I finally considered whether the £100 compensation Ascot Lloyd has offered Mr D for the distress it has caused is reasonable.*

#### *Distress and inconvenience*

*Mr D has told this service that the unsuitable advice has caused him to run out of money and has left him distraught. Mr D also said that the complaint had been ongoing since July 2022. And that it'd taken a great deal of time and effort to get Ascot Lloyd to respond to his complaint.*

*Mr D felt that Ascot Lloyd's complaint handling process was inept. And that he'd had to constantly chase it. He said he'd been put through considerable distress and inconvenience due to both the unsuitable advice and because of Ascot Lloyd's failure to keep him updated. So he doesn't agree that £100 compensation is enough.*

*The independent actuary explained that it'd taken nine months for the loss calculations to be performed because of the requirement to obtain sufficient information from both OPSs about the transferred benefits, and from the drawdown provider about the proceeds of the transfers. He explained why, due to these requirements, the third quarter of 2023 was the earliest he'd been able to carry out the calculation.*

*Mr D also questioned why he'd not received any updates from the independent actuary or Ascot Lloyd during that period. The independent actuary said that he was appointed by Ascot Lloyd, and that he would therefore very rarely contact a consumer directly. I think this is a reasonable position. But I haven't been provided with any evidence that Ascot Lloyd made any attempt to keep Mr D updated about the progress of the loss assessment. I think it should've kept him informed about what was happening during this time. I can see that it would've been extremely concerning not knowing what was going on with such a critical calculation.*

*I therefore consider that Ascot Lloyd should increase the compensation for distress and inconvenience to £500, as I think this more fairly reflects the stress caused by the time Mr D*

*had to wait and chase for an update.*

*I'm very sorry that Mr D's financial future is now less secure than it would've been if he hadn't been advised to transfer his OPSs, and if he hadn't then taken unsustainable withdrawals from his plan. But the evidence shows that Mr D chose to withdraw significantly more benefits from his drawdown plan than he would've received from his OPSs. This led to what the independent actuary called "a gain" in the past, as Mr D had used considerably more funds in the past than he would've had access to in his OPSs. He's now in the situation where the value of his remaining benefits is significantly lower than he would've had if he'd remained in his OPSs. The independent actuary called this "a loss" in the future. For both of Mr D's OPSs, the past gain has been assessed as considerably higher than the future loss. The regulator's rules require the redress calculation to encompass both elements, so I can't fairly ask Ascot Lloyd to ignore the past loss and pay Mr D redress based only on his future losses.*

*For the reasons I've explained above, I'm satisfied that Ascot Lloyd has carried out the correct loss assessment. But I consider that it should increase its compensation for distress and inconvenience from £100 to £500. Therefore I intend to uphold the complaint.*

I received the following response to my first provisional decision:

*Ascot Lloyd still felt that the £100 compensation it'd offered Mr D was fair. It felt it had kept in contact with him throughout the process. It provided a timeline of that contact. This stated that it had issued the 25 October 2022 final response letter on that date. It also said that after Mr D had replied, it'd issued a further response to him on 2 November 2022.*

*Ascot Lloyd also said it had made contact with Mr D to update him about the calculations on numerous occasions over the period between 25 October 2022 and the loss assessment being shared with Mr D in September 2023. It provided this service with evidence of exchanges between it and Mr D on the following dates over that period:*

*25 October 2022 – Final Response issued to Mr D.*

*2 November 2022 – Email response issued to reply from Mr D.*

*10 November 2022 -Update issued to Mr D.*

*29 November 2022 - Update issued to Mr D*

*2 December 2022 - Update issued to Mr D*

*16 December 2022 - Update and timeframe issued to Mr D*

*4 January 2023 – Letter Of Authority and update sent to Mr D*

*9 January 2023 – Response issued to Mr D*

*1 March 2023 – Update issued to Mr D*

*4 April 2023 - Update issued to Mr D*

*18 April 2023 - Update issued to Mr D*

*24 April 2023 - Update issued to Mr D*

*4 May 2023 - Update issued to Mr D*

*6 June 2023 - Update issued to Mr D*

*8 June 2023 - Update issued to Mr D*

*12 June 2023 - Update issued to Mr D*

*28 June 2023 - Update issued to Mr D*

*19 July 2023 - Update issued to Mr D*

*26 September 2023 - Calculation and offer issued to Mr D.*

*Mr D's representative said he was disappointed by my decision. He said that Mr D didn't remember Ascot Lloyd advising him to stop taking so much money out of his pension, or helping him to understand the impact. Although he acknowledged that Ascot Lloyd had provided "warning" wording in the original advice, he said that Mr D hadn't understood the full consequences of any part of this, from the original sale through to taking the income. Mr D's representative therefore still didn't feel that the outcome was fair.*

*Mr D's representative said that given Mr D hadn't understood the situation, it wasn't surprising that he had ... therefore not attended meetings with his adviser. He felt that as Mr D was obviously vulnerable, Ascot Lloyd should've done more to protect him.*

*Mr D's representative accepted that the regulator had set down a basis that had to be followed, and that this currently showed a notional gain. But he remained unconvinced that the loss calculation that had been carried out was accurate, for the following reasons:*

- He still felt that the loss assessment should've used the actual tax incurred. But this wasn't what the independent actuary had used.*
- He still felt that the loss assessment should've used 55 as the retirement age.*

*I issued my second provisional decision on 20 August 2024. It said:*

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*I first considered Mr D's representatives points.*

*It does appear that Mr D didn't fully understand the impact of his pension withdrawals. But I'm still of the view that the adviser tried to hold reviews with Mr D. But that he didn't always agree to them. Based on what Mr D's representative has told this service, I can understand why Mr D might've found it hard to attend such review meetings, but I can't reasonably hold Ascot Lloyd responsible for his decision not to attend.*

*I acknowledge that Mr D's representative still feels that the loss assessment should be run again as he doesn't think it allowed for the correct tax or retirement age. But I remain of the view I set out in my first provisional decision on both of these points. I say this because I remain satisfied that these points have been fully addressed by the independent actuary's April 2024 response, which has been shared in full with Mr D.*

*I next considered Ascot Lloyd's points.*

*Ascot Lloyd disagreed that it should pay a further £400 compensation for failing to keep Mr D informed about the loss calculation process. So I asked it to provide evidence of the contact*

*it said it had with Mr D over the period in question, as it hadn't previously mentioned this contact or provided any evidence about it in its original submission to this service. Ascot Lloyd has now provided this evidence, which our investigator will share with Mr D's representative.*

*I'm unhappy about this failure to provide this evidence alongside the original submissions, as if Ascot Lloyd had provided it from the start, there would now be no requirement for this second provisional decision. Ascot Lloyd has apologised for not providing this information until now.*

*In my first provisional decision, I stated the following about the period between 25 October 2022 and September 2023:*

*... I haven't been provided with any evidence that Ascot Lloyd made any attempt to keep Mr D updated about the progress of the loss assessment. I think it should've kept him informed about what was happening during this time. I can see that it would've been extremely concerning not knowing what was going on with such a critical calculation.*

*However, now Ascot Lloyd has evidenced that it did keep Mr D informed about the progress of the loss assessment, I can no longer reasonably say that it should pay Mr D £400 more in additional compensation due to its failure to keep in touch with him. I say this because the new evidence shows that Ascot Lloyd took reasonable steps to keep in touch with Mr D between October 2022 and September 2023. Therefore I now consider that the £100 compensation Ascot Lloyd originally offered Mr D for the distress and inconvenience is reasonable.*

*Having considered all of the new points made by both parties, I can't reasonably ask Ascot Lloyd to pay £400 more compensation for not keeping Mr D informed between October 2022 and September 2023, as the evidence shows that it did. Therefore I agree with our investigator that Ascot Lloyd needs to take no additional steps to put things right over and above what it has already offered Mr D.*

*I'd like to apologise to Mr D's representative. Neither he nor I knew before the provision of this latest evidence that Ascot Lloyd had kept in touch with Mr D in the way the evidence now shows that it did between October 2022 and September 2023.*

*As the evidence is unclear about whether or not Ascot Lloyd has already paid Mr D the £100 compensation it offered to pay him, I intend to uphold the complaint.*

### **Response to my provisional decision**

Ascot Lloyd said it had nothing further to add. It confirmed that it hadn't yet paid Mr D the £100 compensation it'd offered him.

Mr D's representative asked me to make two amendments to my background section. I have done this.

Mr D's representative made the following points:

- He felt that Ascot Lloyd had only updated Mr D when he himself had chased it for information. He was unhappy that I'd listed all of Ascot Lloyd's responses, as he felt this gave a false impression. He felt it hadn't tried to keep Mr D updated.
- He still felt very strongly that Ascot Lloyd had been left unpunished and financially better off after its redress calculation. He made a number of detailed further points

about why he felt the advice had been unsuitable.

- He said that although Ascot Lloyd had discussed and agreed the monthly withdrawals Mr D had made, Mr D had no recollection that it'd ever warned him that the income he was drawing down was excessive. He wanted to know if there was any evidence that Ascot Lloyd had provided the warnings it said it had given Mr D. He also said that Mr D was adamant that no one had explained to him that taking additional income could put him in a higher tax bracket for any tax year. He said the tax bills had been a huge unpleasant surprise.
- Mr D's representative reconfirmed his view that the redress calculation hadn't been fair. He felt that a court would consider all material matters. And that it would insist that the calculation be carried out fairly to protect Mr D's interests. He also felt that although the redress methodology existed, neither this service nor the courts had to use this methodology in isolation, given Mr D would clearly be disadvantaged by the unsuitable advice for the rest of his life.
- He still didn't think that the loss assessment allowed for the correct tax or retirement age. He therefore felt it was unreasonable to accept the report's conclusion as it stands.

### **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.

I acknowledge the strength of Mr D's representative's conviction that Mr D hasn't been fairly treated. I've considered each of his points in the order that they're listed above.

The evidence does show that Ascot Lloyd didn't always contact Mr D directly to update him on the progress of the loss calculation. I can see that Mr D himself contacted Ascot Lloyd to ask for updates. But the loss calculation was complex and time-consuming, so it wasn't going to be carried out quickly. Overall, based on what I've seen, I'm satisfied that Ascot Lloyd did enough to keep Mr D informed.

I acknowledge Mr D's representative's additional points about why the advice was so unsuitable for Mr D. But this has already been accepted by Ascot Lloyd. So I won't comment further on this.

Mr D's representative wanted to know if there was any evidence that Ascot Lloyd had provided the excessive withdrawal warnings it said it had given Mr D. He also felt that Ascot Lloyd hadn't explained to Mr D that taking additional income could mean he'd pay higher rate tax.

As I noted in my provisional decision, the Suitability Report stated that Ascot Lloyd didn't recommend a withdrawal which exceeded 5% of the value of the fund. It also explained that it was important to regularly review Mr D's financial arrangements.

There's also evidence from Ascot Lloyd's file that it tried to arrange review meetings with Mr D when it found out he'd withdrawn further lump sums from his plan without advice. In addition, Ascot Lloyd said that for the withdrawals Mr D made after discussions with his adviser, when tax was payable, it provided him with gross and net of tax amounts.

I appreciate that there isn't a great deal of documentary evidence on this. But based on what I've seen, I'm persuaded that Ascot Lloyd did provide Mr D with excessive withdrawal

warnings. But even if it hadn't, the redress would still be the same. I'm also satisfied that Ascot Lloyd took reasonable steps to provide Mr D with tax information. But that it couldn't do this when he took additional withdrawals from his pension without advice.

Mr D's representative has explained in detail why he considers the redress calculation isn't fair to Mr D. He felt that neither this service nor the courts should be constrained by the redress methodology.

While I acknowledge this point and Mr D's representative's strength of feeling about it, I don't have the power to require Ascot Lloyd to carry out a different redress calculation. As I explained in my first provisional decision, we're not the regulator, and we can't reasonably recommend a different approach to the one the regulator requires. If Mr D doesn't accept my decision, he may still be able to take his complaint to court.

Mr D's representative still felt the loss assessment had used incorrect assumptions for tax and retirement age. Therefore he felt it was unreasonable to accept the report's conclusion.

I've carefully considered Mr D's representative's points here. But I remain of the view I explained in my provisional decisions. I still consider that the assumptions used for tax and retirement age were reasonable. And that even if the loss calculation were run again allowing for retirement at age 55 and the actual tax paid, it would still show no loss to Mr D.

Having considered Mr D's representative's points, I remain of the view I set out in my second provisional decision. I therefore uphold the complaint.

### **Putting things right**

I require Capital Professional Limited trading as Ascot Lloyd to pay Mr D £100 compensation for the distress and inconvenience it has caused him.

### **My final decision**

For the reasons set out above, I uphold Mr D's complaint. I require Capital Professional Limited trading as Ascot Lloyd to take the actions detailed in the "Putting things right" section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 14 October 2024.

Jo Occleshaw  
**Ombudsman**