

The complaint

Mr and Mrs S complain that they received incorrect advice and poor service from Capital Professional Limited trading as Ascot Lloyd Limited (Ascot Lloyd).

What happened

I issued a provisional decision on this complaint on 29 January 2025. The background and circumstances to the complaint and the reasons why I was minded to uphold it were set out in that decision. I've copied the relevant parts of it below, and it forms part of this final decision.

Copy of provisional decision

Our investigator sent his final assessment of the complaint on 24 October 2024. The background and circumstances to the complaint were set out in that assessment and are known to both parties, so I won't repeat them all again here. However to summarise, Mr and Mrs S had been clients of Ascot Lloyd (and its predecessor firms) since February 2012. Ascot Lloyd had provided advice on Mr and Mrs S' investment portfolio including personal pensions and ISAs.

In a review carried out in October 2019 Mr and Mrs S were advised by Ascot Lloyd to make no alterations to their investments as it was concluded that their current position remained appropriate for their needs, objectives, and risk profile. However in November 2021, a new adviser for Ascot Lloyd recommended a review of all of Mr and Mrs S' investments, as he said they hadn't been correctly aligned to their risk profile in the October 2019 review.

Mr and Mrs S subsequently complained to Ascot Lloyd about several issues. Ascot Lloyd agreed with some of the points raised and made an offer to Mr and Mrs S to resolve their complaint. Mr and Mrs S didn't accept the offer, and their complaint was referred to us. Mr and Mrs S consider if the advice about the suitability of their investments they received in October 2019 was incorrect, then previous advice they'd received may also have been unsuitable as they had been invested in the same risk profile for many years prior to October 2019.

Our investigator said he'd looked at the yearly and half yearly reviews provided to Mr and Mrs S between 2014 and November 2021. He thought there had been numerous discussions about their risk appetite and risk profile. He said throughout their relationship with Ascot Lloyd Mr and Mrs S had been recorded as Low Medium Risk Investors (5/10 on the risk rating scale). But he said there were records of discussions with Mr and Mrs S each year about the fact the recommended portfolio was invested in slightly higher risk funds (6/10 - High Medium Risk rating) and they appeared to have made clear they were happy with the level of risk they were taking on.

The investigator said Mr and Mrs S had substantial cash reserves and property outside of the investment portfolio Ascot Lloyd were managing. He said when looking at their overall financial provision, he thought the portfolio was broadly aligned to the degree of risk Mr and Mrs S had agreed to take. He said the issue of risk had been regularly discussed with Mr

and Mrs S, and he was satisfied the recommendation to invest in a slightly higher risk blend of funds was appropriate when taking the overall position into account. The investigator said Ascot Lloyd had made its own choice to compensate Mr and Mrs S for this part of their complaint.

ISA

Mr and Mrs S were unhappy they weren't provided with any recommendations to contribute to their ISAs over a two-year period. They said Ascot Lloyd had previously recommended contributing the maximum amount to an ISA each year in order to benefit from the tax-free savings allowance. Mr and Mrs S believed this was a matter of simple housekeeping which had been overlooked.

The investigator noted there were valid reasons for Mr and Mrs S not to have been advised to use their ISA allowance for 2019/20 – they had identified a need for a significant cash amount required for that year. But he thought they should have been advised to use their ISA allowance in other years. He noted Mr and Mrs S had continued to contribute the full annual allowance to their ISAs in the two years since leaving Ascot Lloyd, and had said they would continue to do so. The investigator said if Mr and Mrs S could demonstrate they paid additional tax on their investments which otherwise would've been paid into an ISA, he would consider the figures provided.

Missing invoices

Ascot Lloyd failed to provide invoices for three quarters' worth of ongoing advice charges to Mr and Mrs S during 2020. The invoices weren't provided until 2020, after Mr and Mrs S had to chase the matter. Ascot Lloyd had confirmed this was an oversight.

Time without an adviser

Mr and Mrs S said they weren't informed of the change of their adviser. And they didn't think they had been allocated a new adviser for a period of three months during 2021 whilst they were still paying fees. Ascot Lloyd said the original adviser had been allocated to Mr and Mrs S until August 2021, before leaving Ascot Lloyd in September 2021. And the new adviser had called Mr and Mrs S to introduce himself on 3 August 2021 ahead of their first meeting in November 2021. The investigator didn't think the evidence suggested Mr and Mrs S had been without an adviser during the period in question.

However the investigator noted no service appeared to have been provided to Mr and Mrs S between the first adviser's final recommendation letter dated 23 April 2020 until August 2021. And then the November 2021 recommendation seemed to only have been correcting perceived mistakes by the previous adviser.

So whilst he thought Ascot Lloyd had demonstrated it provided the agreed service prior to 23 April 2020, he didn't think the service Mr and Mrs S were paying for after this date had been delivered. He therefore thought Ascot Lloyd should refund any ongoing advice fees deducted from the pension after 23 April 2020.

Method of payment of fees

Mr and Mrs S were concerned the method of payment of fees was detrimental as they thought the payments should've been deducted from their investments. The investigator noted the earliest agreement on file signed by Mr and Mrs S on 3 April 2014 indicated the method of payment for the customers was a choice they had. Mr and Mrs S could pay

directly; by deduction from their investments; or a combination of both.

The investigator said the client agreement document clearly demonstrated the different options available to Mr and Mrs S. He said Mr and Mrs S were free to discuss the method of payment with Ascot Lloyd at any stage.

The investigator noted there were other documents on file suggesting Mr and Mrs S were aware they had a choice in the method of payment of the fees and engaged in at least one conversation with Ascot Lloyd about their preferred payment method.

Advice fees

Mr and Mrs S had said they thought they should be compensated for the time and money it cost them to move advisers once their relationship with Ascot Lloyd became untenable. However the investigator didn't think he could hold Ascot Lloyd responsible for Mr and Mrs S' decision to transfer their advice arrangement elsewhere, or the time and cost associated with their decision.

The investigator thought that to put things right Ascot Lloyd should:

- Refund all fees charged to Mr and Mrs S, if any, after their review on 23 April 2020.*
- If these fees were deducted from the portfolio, any refund should include any potential lost growth those fees would've earned if they'd remained invested since they were deducted.*
- Pay Mr and Mrs S the value of any additional Capital Gains Tax paid by them in the relevant years they didn't contribute to an ISA.*
- Pay Mr and Mrs S £500 for the distress and inconvenience caused by the poor service during their relationship with Ascot Lloyd.*

Neither Mr and Mrs S or Capital Professional Limited accepted the investigator's assessment. The complaint was therefore 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.

Both parties have provided further evidence and arguments in support of their case following the investigator's assessment. I've taken it all into account in making my provisional decision below. However I haven't commented on everything that has been said unless I think it is appropriate to do so. Some of my findings are different, and so in that light different arguments might be made. Both parties have the opportunity to provide further evidence in response to this provisional decision.

Portfolio Risk

The risks presented by an investment or portfolio of investments can be looked at both in isolation and in the round. And the level of risk presented can be different when considered in the context of different investors' particular circumstances. Mr and Mrs S have said they were told in discussions that the risk level of their overall portfolio was 6, but if their properties were taken into account the overall risk profile would be 5. This is a reasonable approach. I'm satisfied that Mr and Mrs S were aware of and willing to accept the higher medium level of risk. And that they were in a position financially to take that level of risk – i.e they had the capacity to accept the risks involved. Like the investigator, I don't think that level of risk was unsuitable for Mr and Mrs S given their financial circumstances.

I've considered the adviser's reports dated 11 November 2021. The adviser's findings about the suitability of the portfolio from October 2019 appear to have been based on the portfolio being aligned to a risk profile of 5. However as I've said, Mr and Mrs S had agreed a risk profile of 6, and the portfolio had been managed/aligned on that basis. I don't think the adviser's comments were therefore valid, in particular about asset allocation and diversification. There was diversification in different asset classes and geographical areas in Mr and Mrs S' portfolio – just not to the same degree as for a portfolio with risk profile 5. That is not unusual or inappropriate, and I think the adviser was making his comments in the context he understood the portfolio was being aligned to risk profile 5.

Additionally, I think the overall message about significant underperformance was misleading. Mr S' SIPP made up a significant part of the overall portfolio – around £600,000/about two-thirds. And this had outperformed the benchmark used by the adviser for the period by around 2%. In any portfolio it's not unusual for some investments to underperform and some overperform. But it appears the investment making up a significant proportion of the overall portfolio had performed well over the previous five-year period.

Ascot Lloyd has calculated that Mr S was over £68,000 better off as a result of his investments being aligned to the slightly higher level of risk when compared to the value of Mr S' portfolio with a benchmark representing the low medium level of risk. It was appropriate to make a comparison using that benchmark given the purpose of the calculation was to compare what Mr S actually had against what he might have had if he'd been invested in line with the lower medium risk profile (given the concerns the investments weren't aligned to the correct level of risk). Using a benchmark will take into account that some investments will perform well, and some won't. I'm satisfied it was an appropriate comparison taking both risk and possible underperformance into account.

Where investments are made into risk-based assets there are usually no guarantees as to performance. As the investigator explained, if a portfolio of investments is suitable, then a firm isn't ordinarily liable for poor performance – it can't control market forces/prices. So it wouldn't follow that a portfolio's performance below its relative benchmark would result in the firm being liable to pay compensation. As I've said, I'm satisfied that Mr and Mrs S' portfolio was invested in line with the risk profile agreed – 6 – and this was suitable for them. So I don't think compensation is payable as a result of unsuitability in itself.

Here, however, as well as suitability, both the second adviser and the firm (when dealing with Mr and Mrs S' complaint) concluded that the first adviser failed to recommend switching some long-time underperforming funds. So this was performance as seen at the October 2019 review.

In my opinion it is difficult, looking back in hindsight, trying to identify at what point a particular fund or funds ought reasonably to have been switched. Clearly at any given point in time it's not possible to know how a particular fund will perform going forward. And therefore whether a poorly performing fund might turn around – it's not an exact science, and a matter of judgement. As I've said above, in any portfolio there are likely to be differences in performances of funds, particularly as they may be invested in different asset types. Some of Mr and Mrs S' portfolio was invested in corporate bonds. So their performance won't necessarily mirror performance for those funds invested in equities, or be comparable to a composite index that mirrors the performance of a mix of asset classes.

The firm made an offer to Mr and Mrs S because it said the portfolio wasn't aligned to the degree of risk that Mr and Mrs S had agreed to take. And it thought the first adviser should have recommended some fund switches of underperforming funds.

It's not entirely clear to me what particular funds the firm thought should have been switched and when. From the information in the graphs provided in the November 2021 reports, it only appears one fund was consistently underperforming by a significant amount and over a period of time (by December 2019) – Mrs S' Invesco Perpetual fund. However earlier on in the same report its return was noted as 4.1% per annum. And in the other report of the same date, it said just over £30,000 had been invested into that fund, just over £44,000 had been withdrawn, and its value was still just over £15,000. These figures suggest good performance. So I'm not sure of the reason for the apparent inconsistency in the information.

As I've said, in my opinion the portfolio was reasonably aligned to the degree of risk that had been agreed. And this was suitable for Mr and Mrs S. The firm made an offer because it thought the portfolio wasn't invested suitably, and that the adviser should have recommended switches of underperforming funds. As I've said, I'm not clear what funds the firm thought should have been switched and when, and based on what evidence. I'm not currently intending on making an award for suitability/underperformance, and it's for the firm to decide if that offer is still open for acceptance by Mr and Mrs S.

ISA

Like the investigator, I think there were good reasons why Mr and Mrs S weren't advised to make use of their ISA allowance for 2019/20. But I haven't seen any reason why this wasn't recommended for 2020/21 or 2021/22. Mr and Mrs C have suggested a settlement of £3,600. That is based on Mr S paying higher rate tax and Mrs S basic rate tax on 3% interest accruing over a five-year investment term on £80,000 (£20,000 each invested for two tax years). Mr and Mrs S have said that their calculation "...is simple and does not involve compound interest. In addition, a low rate of interest is taken over a short period. We have other ISAs some of which have been held as long as 12 years or more, earning interest or growing with no liability for tax when the funds are eventually taken out."

There are a number of ways that appropriate redress might be calculated in these circumstances. Mr and Mrs S had a variety of ISAs in both equities and corporate bonds. I don't think what they have suggested is unreasonable in the particular circumstances, and my current intention is to make an award for the £3,600.

Refund of ongoing fees

The investigator didn't think the firm had provided an adequate level of service after the first adviser's final recommendation letter dated 23 April 2020. He said there appeared to be no further contact with Mr and Mrs S after that until the November 2021 report. And the report was to correct the perceived mistakes by the previous adviser.

Ascot Lloyd responded to say that the adviser clearly provided a review dated 11 November 2021. And its tax team was completing the client's tax return through 2020. It provided a copy of a sample of correspondence; a letter dated 26 July 2021 from Ascot Lloyd to Mr S enclosing his tax return. And a reply letter dated 29 July 2021 from Mr S to Ascot Lloyd thanking it for the tax return.

On the one hand it does appear that there was some work going on in the background. And there is usually some degree of administration involved in running a portfolio. However it seems to me that the main feature of and benefit provided by the ongoing service was the regular reviews. As I have explained above, I think the 11 November 2021 review was flawed. And Mr and Mrs S were asked to pay extra to put things right. Firstly I don't think there was a need for a radical restructuring of the portfolio. And secondly, my current understanding is they were already paying for that service. So I don't think it would be fair for Mr and Mrs S to have to pay for that review (if they were subsequently invoiced/paid for it),

I therefore intend to order that Ascot Lloyd refunds 75% of the ongoing service charges they paid for the period 23 April 2020 to 11 November 2021. And 100% of them from 11 November 2021.

New Adviser's fees

My understanding is that the second adviser wanted Mr and Mrs S to pay a fee of 2% for him to re-balance their portfolio (Mr and Mrs S have said this would have been about £18,000 at that time). I also understand that Mr and Mrs S were already paying an annual ongoing advice charge at that time. So it's not entirely clear to me why they would have needed to pay an additional charge. However whether they were paying an ongoing advice charge or not, 2% was a significant sum. And the adviser had effectively told them that the firm's previous advice was flawed.

I think it was therefore natural for Mr and Mrs S to have had doubts about the quality of the advice they were getting from the firm and gone onto explore obtaining advice elsewhere – particularly in the context of the proposed cost of further advice from Ascot Lloyd. Mr and Mrs S subsequently moved advisers and have said they incurred fees of £6,000 for advice. In the context, I think it was perfectly reasonable for them to have moved adviser and paid the significantly lower fees. Mr and Mrs S shouldn't have had to incur these additional costs, and so I think it's fair for Ascot Lloyd to refund them to Mr and Mrs S.

Mr and Mrs S have withdrawn their complaints related to the pension commencement lump sum and lifetime allowance certificate. I therefore haven't considered them in this decision. And for those issues where I haven't provided further comment I agree with the reasoning set out by the investigator.

My provisional decision

My provisional decision is to uphold Mr and Mrs S' complaint.

I intend to order that Capital Professional Limited trading as Ascot Lloyd should calculate and pay compensation to Mr and Mrs S on the following basis.

- It should refund 75% of the ongoing fees Mr and Mrs S paid for the period 23 April 2020 to 11 November 2021. And 100% of them from 11 November 2021. I understand Mr and Mrs S paid for them when invoiced by the firm. So the refund should attract interest at the rate of 8% simple from the date they were paid to the date of a final decision.*
- It should pay Mr and Mrs S £3,600 for the additional tax they may have to pay as a result of not utilising their ISA allowance for two years.*
- It should pay Mr and Mrs S the fee that they paid to the new adviser. Mr and Mrs S have said this was £6,000, however they will need to provide documentary evidence of the amount they paid. Interest at the rate of 8% simple per annum should be added from the date Mr and Mrs S paid that fee to the date of a final decision.*
- It should pay Mr and Mrs S £500 for the distress and inconvenience caused by the poor service during their relationship with Ascot Lloyd.*

Responses to the provisional decision

I asked Mr and Mrs S and Capital Professional to let me have any further evidence or arguments that they wanted me to consider before I made my final decision.

Professional Capital provided some further comments on the compensation that I had

proposed in my provisional decision. Mr and Mrs S said they accepted the provisional decision, but provided further comments to be considered in the event that Capital Professional didn't accept the decision and the matter carried on.

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 seen no reason to depart from the findings set out in my provisional decision.

Capital Professional said it thought I should reconsider that 75% of the fees should be refunded for the period 23 April 2020 to 11 November 2021. It said there was no set split, and it thought 50% would be fair. It also didn't think the 8% interest awarded on those fees was appropriate, and it would be more accurate to assess them against the investment performance of the portfolio.

I explained the reasons why I thought a refund of 75% was reasonable in my provisional decision, and I'm still satisfied that is fair. And Mr and Mrs S paid for the fees outside of the pension – money they then didn't have the use of. So I still think that 8% simple interest is appropriate in the circumstances.

Capital Professional said it didn't think the award of £3,600 for the additional tax paid by Mr and Mrs S on their ISAs was appropriate as it might not occur. It said it thought an appropriate figure could be agreed when the figure was known. Mr and Mrs S missed out on the use of their ISA allowances for the two particular years and so won't be able to use those allowances retrospectively. The losses won't be known, and so in the circumstances assumptions have to be made to make a fair assessment of possible losses given their circumstances. As I said, there are a number of ways that appropriate redress might be calculated and over varying time periods. But I don't think the proposal Mr and Mrs S put forward to settle that matter was unreasonable in the particular circumstances – it was based on a reasonable return and over a modest period.

Capital Professional didn't think it should refund the new adviser's fees as Mr and Mrs S would have paid fees for advice regardless. It said if Mr and Mrs S had remained with Ascot Lloyd there would have been a fee charged for advice. I think the key point here is that, for the reasons I set out above, the adviser's reports dated 11 November 2021 were flawed, and gave Mr and Mrs S a misleading impression of their portfolio.

There was no need for a complete rebalancing of their portfolio for which the adviser wanted to charge a fee of 2% - about £18,000. And as I said, it would be perfectly natural for Mr and Mrs S to doubt the quality of the advice they were being provided with by the firm when the second adviser was saying there were deficiencies in the previous advice and he was giving a misleading impression of performance. If the second adviser hadn't given the misleading impression Mr and Mrs S wouldn't have thought they needed further advice to rebalance their portfolio – either with another firm – which as I say was perfectly reasonable to do in the circumstances. Or with Ascot Lloyd. So I think it is fair that Ascot Lloyd refunds those fees.

I've taken into account what Mr and Mrs S have said in response to my provisional decision. However it hasn't given me cause to change my provisional decision which they accepted, and so I don't think it's necessary to comment further.

My final decision

My final decision is that I uphold Mr and Mrs S' complaint.

I order Capital Professional Limited trading as Ascot Lloyd to calculate and pay fair compensation to Mr and Mrs S as set out in my provisional decision as copied above.

Interest at the rate of 8% simple per annum should be added to the compensation from the date of this final decision to settlement date if settlement isn't arranged within 28 days of us notifying Capital Professional Limited of Mr and Mrs S' acceptance of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mr S to accept or reject my decision before 28 March 2025.

David Ashley

Ombudsman