DRN-5400088

The complaint

The trustees of B ("the charity") complain that LFS & Partners Limited trading as Lyn Financial Services ("Lyn"):

- Didn't provide the charity with an attitude to risk report from 2016.

- Failed to provide advice about changing the charity's Cofund/AEGON investment portfolio ("the Cofunds portfolio").

- Failed to advise the charity that the risk of the investments weren't low/medium risk investments.

- Continued to recommend the Woodford Equity Income Fund ("WEIF") despite the trustees having questioned being invested in that fund.

What happened

Lyn started providing an advisory service to the charity in 2017 when the adviser who had been providing the charity with advice moved to Lyn from his previous firm. The adviser confirmed to the charity in a letter dated 9 June 2017 that the terms that had been agreed with the previous firm would be maintained by Lyn going forwards. Two trustees of the charity then signed a client agreement with Lyn on 19 June 2017.

The overall charity portfolio at that time consisted of the Cofunds portfolio - made up of several direct investments one of which was the WEIF - the Church of England Investment Fund ("the COIF") and the M&G National Association of Almshouses Common Investment Fund ("the NAACIF").

It was decided at a quarterly trustees meeting that took place on 1 October 2019 that the charity would sell the investments in the Cofunds portfolio, and that the charity wouldn't continue to use Lyn's services - with those services stopping as from December 2019.

The charity subsequently complained to Lyn but it didn't uphold the complaint. In short it made the following points:

- The only request for an attitude to risk report it has found is dated 3 June 2021, which is after it stopped being the servicing agent for the portfolio.

- The file shows that the portfolio was managed in accordance with the attitude to risk agreed to and that the adviser carried out the services agreed in his letter of 9 June 2017.

- The adviser reviewed the funds in the Cofunds portfolio and that included reviewing the risk profile, asset allocation and performance.

- The adviser also obtained valuations for the M&G and COIF holdings.

- The adviser also responded to queries about the performance of the portfolio.
- The adviser reviewed the Cofunds portfolio annually between June 2017 and December 2019 and the reason he didn't recommend any changes was because he thought the portfolio provided the best approach.
- The charity confirmed a balanced attitude to risk with the previous firm and there is no record of it confirming an attitude to risk of low to medium.
- The overall risk of the portfolio is similar to that of the FTSE UK Private Investor Balanced.
- The adviser recommended continued investment in the WEIF as he believed it was a sound investment and this didn't amount to poor advice.

The matter was referred to our Service and one of our investigators considered the complaint and thought that it should be upheld. He said that the charity understood the risk of the portfolio as low/medium but the weighting of equities isn't what would be expected in such a portfolio or even a balanced risk portfolio.

Lyn didn't agree with the investigator. It said that the charity's attitude to risk was balanced as confirmed by the previous firm in a 'review and fund switches' document dated 13 August 2015 which referred to the Trustees being happy to invest mainly in medium risk equity based investments.

Lyn also pointed to contradictory information in the documents, with the minutes of the quarterly trustees meeting of 28 August 2018 referring to the charity being medium risk whereas the trustees reports and unaudited accounts for 2018 and 2019 make reference to low/medium risk. Lyn said the portfolio was balanced risk, as shown by the overall risk being similar to the FTSE UK Private Investor Balanced Index. It also argued that redress should be calculated to December 2019 when it stopped providing a service to the charity.

As Lyn didn't agree with the opinion of the investigator the matter was referred to me for decision. I issued a provisional decision upholding the complaint. The findings are set out below.

"When the charity referred the complaint to our service it said that the two main areas of claim were the failure by the adviser to arrange an attitude to risk survey in the period of time that he provided a service and the poor financial advice about the WEIF - which the charity said also included a failure to assess the charity's attitude to risk.

Before I address the main issues in the complaint, I think it is important to clarify the service that Lyn agreed to provide. I say this in part because the charity has referred to the adviser's actions between 2015 and 2019 whereas the agreement between Lyn and Mr P was entered into in June 2017. In the circumstances it is only responsible for what happened between then and the end of 2019, when it stopped providing a service. In other words, I am not considering whether the adviser did anything wrong before June 2017.

Although Lyn has referred to clients normally agreeing a 'Service Proposition – Terms of Engagement' which set out the service to be provided, it appears this was never completed in this case. It therefore relies on what was set out in the adviser's letter of 9 June 2017 as to the service to be provided. In that letter the adviser said:

"Following on from recent move to Lyn and our discussions re our charges moving forward I am pleased to confirm Lyn are happy to the terms agreed by me in 2015 although these are

much lower than our standard charges."

And, under the heading 'Ongoing Service and Fees' the adviser stated as follows:

"You wished me to advise the trustees on investments matters, and to have an annual face to face review as part of a trustee meeting in your [redacted] *property on an annual basis.*

You wished me to provide advice on the ongoing management of the investment portfolio held with Cofunds and to assist with liaison in respect of your other holdings with M&G and COIF. You wished me to provide annual valuations to include the COIF and M&G holdings as well as Cofunds."

There was obviously no need for advice on the ongoing management of the COIF or

NAACIF funds as these were managed funds in any event. However, as those funds formed part of the charity's overall portfolio, I would have expected the adviser to have taken these into account when advising the charity in the annual face to face meetings. Put another way, I wouldn't expect the adviser to have considered the Cofunds portfolio in isolation. I note in this regard that in a 'Review and Fund Switch' report prepared by the adviser when he was employed by the previous firm, dated 13 August 2015, the adviser's recommendations included that the COIF and NAACIF funds remain the same whilst recommending fund switches within the Cofunds portfolio. So, it appears that the service previously provided did include consideration of whether the charity should remain invested in the COIF and NAACIF.

The risk of the portfolio.

Lyn refers to documents from the previous advising firm which indicate that the charity's attitude to risk was 'balanced'. I accept that 'Balanced Risk' is circled in a document titled 'Corporate Financial Analysis'. The definition of this is:

"You would like to take advantage of equity investments with the prospect of good long term returns and can accept the increased short term volatility."

A balanced risk portfolio would generally provide a balance between equities as high- risk investments and lower risk investments and is often considered synonymous with medium risk. And I note that in the Review & Fund Switches document I refer to above, under the heading 'Attitude to Risk' the adviser has stated:

"The trustees have confirmed that they are happy to invest mainly in medium risk equity based investments. The trustees are aware that these types of investment provide no guarantee of capital return and their value may fall as well as rise".

I have assumed that the reference to medium risk equity based investments is to

investments that contained a mix of equities and lower risk asset classes such that each investment could be considered as medium risk. I wouldn't expect a portfolio to be invested entirely in medium risk investments but rather to have investments with different risks so that the overall portfolio could be considered medium risk.

In the circumstances I think it is fair and reasonable to assume, based on the reference to the charity being happy to invest in equity based medium risk investments, that at this time it had a medium attitude to risk so far as the overall portfolio is concerned. So it is clear, I have seen no evidence that its risk appetite was low/medium at this point.

I am reinforced in that view by the fact that the 2015 Review & Fund Switches document identified an investment term of 'ten years plus' and the objective as:

"to review the current investments with a view to making sure that they are still in line with the charities requirements for growth and income to repay capital withdrawn in 2002 and 2007."

I think this is consistent with the charity having a medium risk appetite prior to Lyn providing its services and I have seen no persuasive evidence that the charity's risk appetite was ever anything other than medium.

I have also seen no documentary evidence that the adviser ever informed the charity that the portfolio was based on a low/medium risk and given he is unlikely to have ever thought the portfolio had such a risk I am not of the view he would have mistakenly stated this. Nor do I think there is any basis for thinking he would have deliberately done so.

Moreover, the minutes from the quarterly trustee meeting that took place on 28 August 2018 record that the adviser "confirmed the charity investment risk strategy is medium". In the circumstances I am satisfied that not only that the adviser didn't inform the charity that the portfolio was low/medium risk but that he made clear it was medium risk. There is no evidence this was ever challenged by the charity or any persuasive evidence that its risk appetite was low/medium at any point before it emailed the adviser in September 2019, which I refer to further below.

In making that finding I have taken account of the trustee report for the year ended 30 June 2018 which refers to the charity investments being set at low/medium risk. Given that on the charity's case the adviser didn't assess attitude to risk after 2015 - at which time the charity was identified as having a medium risk appetite as I have said - the reference to low/medium is more likely than not an error on the part of the trustees.

I acknowledge that the reference to low/medium risk is repeated in the trustee report for the year ended 30 June 2019, but this is even less understandable, given that the adviser had clearly stated in the meeting of August 2018 that the investment strategy was medium risk, and this was recorded in the minutes. In the circumstances the most likely explanation in my view is that the trustees referred back to the 2018 report and repeated the mistaken reference to low/medium in that report.

However, whatever the reason, there is no persuasive evidence that the charity was ever informed by the adviser that the portfolio was low/medium risk. Nor is there evidence this was communicated to him as the preferred risk appetite of the charity before 20 September 2019 - when the charity manager emailed him saying "We have indicated that we would like a low to medium risk which is appropriate for a charity however with the special interests it looks like this is a medium to high risk, the trustees would like to know why."

I note that the email refers to the charity having 'indicated' they wanted a low/medium risk but given the lack of any documentary evidence to support this being raised earlier I am not persuaded this was indicated to the adviser beforehand.

In response the adviser referred to risk scores from a business called Financial Express which calculates risk by reference to the FTSE 100 - with investments with a risk rating above 100 being more volatile than the FTSE 100 and those below 100 being less volatile than the FTSE 100. The adviser said that the Cofunds portfolio scored 72 whereas the COIF scored 73 and the NAACIF 77. The adviser stated that he believed the portfolio remained appropriate in the current market but that he was happy to recommend alternative strategies but without addressing what the charity had said about indicating it wanted a low/medium *risk or that the current portfolio was medium/high risk.*

This is something that I would have expected the adviser to have addressed but am mindful that the quarterly trustee meeting was due to take place and he may have decided to leave any discussion about this to the meeting. That meeting on 1 October 2019 resulted in the charity deciding to stop using Lyn's services in any event and to sell the investments in the Cofunds portfolio and reinvest in the COIF, or another alternative. So, any further discussion about risk and possible alternative strategies became irrelevant.

The charity argue that to some extent its actual attitude to risk is irrelevant as the issue is that the adviser didn't seek to establish this between 2015 and the end of 2019. But, as I have said, I am only considering the actions of the adviser from June 2017 when the charity agreed to use Lyn's services.

And whilst the charity has suggested that the adviser should have considered its risk

appetite annually because of the regular change in trustees, I am not persuaded it was necessary to address the charity's risk appetite every year simply because of this. Having said that I accept that it may have been advisable for the adviser to carry out a further assessment of the charity's attitude to risk at some point following the change in advisory firm to Lyn.

However, even if he had done so it is difficult to know what the outcome of such an

assessment would have been. As I have said, the adviser made clear that the risk of the portfolio was medium when he met with the trustees in August 2018 and the minutes of that meeting don't suggest that any issue was taken with that at the time. And the only evidence that the charity wanted a low/medium risk is what is stated in the annual; reports of 2018 and 2019, which for the reasons I have explained I don't find persuasive.

It is therefore difficult for me to conclude that if the adviser had assessed the charity's

attitude to risk in or around June 2017 or any other point whilst Lyn was providing a service to the charity, this would have led to a change from its existing medium attitude to risk.

In making that finding I have also taken into account that the minutes of the meeting of 1 October 2019 show that the trustees were considering reinvesting the monies in the Cofunds portfolio into the COIF which isn't a low/medium investment. I am also mindful that the adviser had only recently provided risk scores for the different elements of the overall portfolio, which indicated that the COIF was a slightly higher risk than the Cofunds portfolio - so the trustees knew the COIF was unlikely to be a lower risk to the funds in the Cofunds portfolio when they referred to possibly reinvesting in the COIF.

However, whilst I am not satisfied that the charity was a low/medium investor at any point in the period that Lyn provided services to it, I think the overall portfolio was too risky for a medium risk appetite in any event.

I don't have all the documents that would allow me to determine the asset breakdown for each part of the overall portfolio over the whole period that Lyn provided its services. However, the documents I have seen show that in 2018 the Cofunds portfolio had over 72% invested in equities and in 2019 this was over 74%, with the COIF having nearly 74% in equities in 2018 and over 70% in 2019 and the NAACIF having nearly 80% in equities in 2019.

I note that Lyn argues that the risk of the overall portfolio was similar to the FTSE UK Private

Investor Balanced index. I have not seen information about the asset allocation for the index in the period that Lyn provided a service to the charity, but the most recent asset allocation shows just over 62% invested in equities with only around 14% in UK equities. This is quite different to the equity makeup in the overall portfolio.

In the circumstances I am not satisfied that this provides evidence that the overall portfolio was invested in accordance with the charity's balanced or medium risk appetite. I think the adviser should have advised the charity that it was too heavily invested in equities, and this meant that it wasn't within its medium risk appetite.

The WEIF

Although I have found that Lyn didn't provide the advice it should have done about the portfolio and the redress that I am awarding makes it unnecessary to consider the WEIF in isolation, as this is a provisional decision its possible my findings could change. I have therefore also considered the continued inclusion of the WEIF within the Cofunds portfolio. The charity argues that the adviser should have advised it to get out of the WEIF because of the issues that arose with it.

The charity points to the losses suffered by the fund between 2017 and 2019 and to it having raised concerns at the quarterly board meeting that took place on 28 August 2018. It says that the adviser recommended no change and that the fund remained a safe long-term investment and that the recent loss in value was due to Brexit.

The charity argues that the WEIF had become a higher risk investment and that as such the adviser should have assessed its attitude to risk in detail in light of his advice to hold onto the fund. The charity argues that the adviser couldn't comply with his obligations under COBS 9.2 without assessing its risk appetite. I don't agree that the adviser needed to reassess the charity's risk appetite whenever he gave advice.

I accept that there was a change in the makeup of the WEIF between when the charity first invested in it and 2018 when it was discussed at the quarterly meeting - in that in 2018 there was more investment in small and medium sized companies, including unquoted companies, compared to 2015. However, the fund was always a high-risk fund and whilst the change in the makeup of the fund increased the risk it didn't fundamentally change the nature of the fund.

And whilst many investors had lost faith in Neil Woodford as the fund manager the adviser wasn't alone in believing that he would be able to turn things around based on his track record and that the fund would in due course provide good long-term returns. This wasn't an unreasonable belief in the circumstances, and I am unable to say that the advice to remain invested in the WEIF was unsuitable putting on one said my finding that the overall portfolio was too heavily weighted in equities.

The adviser couldn't have foreseen that the fund was going to be suspended in June 2019 and then subsequently liquidated."

I said that Lyn should calculate redress by comparing the performance of the Cofunds portfolio with a benchmark, the FTSE UK Private Investors Income Total Return Index.

I gave both parties the opportunity of responding and providing any further information or argument they wanted to make before I made my final decision. Lyn didn't provide any response. The charity did respond and whilst agreeing largely with my provisional decision had one particular concern, that being calculating redress up to December 2019 as regards the investment in WEIF. Given it had already been suspended by that date the charity said that the calculation for that fund should be its terminal value.

The charity otherwise accepted my provisional decision but did make further points to support its complaint that Lyn hadn't assessed the charity's attitude to risk as it should have done. However I was asked to address this only if Lyn challenged the provisional decision. As Lyn has not done so and as the charity has confirmed its acceptance of my provisional decision, bar the issue over valuation of the WEIF, I am not going to set out the points made by the charity – although I have considered everything it has said.

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.

In doing so, I've taken into account relevant law and regulations; relevant regulators' rules guidance and standards; codes of practice; and, where appropriate, what I consider was good industry practice at the relevant time.

It is for me to decide what weight to give evidence a party relies on and where there is a dispute about the facts my findings are made on a balance of probabilities – what I think is more likely than not.

The purpose of my decision isn't to address every point raised and if I don't refer to something it isn't because I've ignored it but because I'm satisfied that I don't need to do so to reach what I think is the right outcome. Our rules allow me to do this, and it simply reflects the informal nature of this service as a free alternative to the courts.

As the charity has agreed with my provisional decision, save the issue over valuation of the WEIF which I address below, and Lyn has provided no response, there is no reason for me to change the findings set out in my provisional decision. These therefore form part of the findings in this final decision unless I state to the contrary.

In short, I am upholding this complaint because I am not satisfied that the portfolio was invested in accordance with the Charity's medium risk appetite.

Putting things right

The charity needs to be put back in the position it would have been in if the Cofunds portfolio had been invested as it should have been. In my provisional decision I explained that it should do this by comparing the value of the Cofunds portfolio with a benchmark over the period that Lyn was responsible for providing a service to the charity.

I am still of the view that this is how redress should be calculated but the charity has pointed out there is an issue with the WEIF. In my view, as the fund was suspended in June 2019 and then subsequently wound up the only value that can be attributed to the WEIF for the purposes of any calculation is what Lyn received following the decision to wind up the fund.

From the information it previously provided the charity received one payment of £13,381.16 and a second of £656.47 making a total of £14,037.63. I can see no issue in the with that being the value used in the calculation carried out by Lyn set out below to keep matters simple and I think it is fair and reasonable in the circumstances.

Fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put the charity as close to the position it would probably now be in if the portfolio had been invested as it should have been by Lyn.

I think the trustees would have invested differently. It is not possible to say precisely what the trustees would have done, but I am satisfied that what I have set out below is fair and reasonable given the charity's circumstances and objectives when the trustees invested.

What should Lyn do?

To compensate the charity fairly, Lyn must:

- Compare the performance of the Cofunds portfolio with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the portfolio. If the *actual value* is greater than the *fair value*, no compensation is payable.

- In addition to paying the difference between the fair value and actual value Lyn should calculate what return the charity would have achieved on that amount using the benchmark set out below from the end date until date of settlement and pay this to the charity.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")
Cofunds portfolio	No longer in force	FTSE UK Private Investors Income Total Return Index	30 June 2017	Date Lyn stopped servicing the portfolio

Actual value

This means the actual amount paid from the investment at the end date.

Fair value

This is what the portfolio would have been worth at the end date had it produced a return using the benchmark.

Any additional sum that the charity paid into the portfolio should be added to the fair value calculation at the point it was actually paid in.

Any withdrawal from the portfolio should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if Lyn totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

Why is this remedy suitable?

I have chosen this method of compensation because:

- The charity wanted Capital growth and were willing to accept some investment risk.

- The FTSE UK Private Investors Income Total Return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.

- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given the charity's circumstances and risk attitude.

My final decision

I uphold this complaint for the reasons I have set out above. LFS & Partners Limited must calculate redress as set out above and pay this to the trustees of the charity.

Under the rules of the Financial Ombudsman Service, I'm required to ask the trustees of B to accept or reject my decision before 16 April 2025.

Philip Gibbons
Ombudsman