

The complaint

Mr W complains that he received negligent retirement financial planning advice from Ascot Lloyd Limited trading as Ascot Lloyd. He argues that this caused him to take more income from his self-invested personal pension ('SIPP') than necessary, causing him to suffer a loss.

What happened

Around April 2021 Mr W was retired and in receipt of two defined benefit ('DB') pensions as well as having a self-invested personal pension ('SIPP'). Mr W was married and his wife, Mrs W, was still working. Mr W was a customer of Ascot Lloyd and was in receipt of ongoing financial advice regarding his SIPP.

In April 2021 Mr W was in contact with Ascot Lloyd about using his SIPP to make a one-off drawdown in order to replace his existing car. His SIPP was in capped drawdown with a value around £186,000, and Mr W had no further entitlement to tax free cash in this SIPP. Ascot Lloyd provided a recommendation on the suitability of making a drawdown as part of its ongoing advisory service. It explained that, based on being a 20% taxpayer Mr W could take a drawdown of £30,000 in order to receive a net payment of £24,000. On 4 May Mr W signed to agree to make a gross income drawdown of £30,000.

Around July 2022 Mr W's health sadly took a turn for the worse. Mrs W, who had power of attorney over Mr W's affairs made Ascot Lloyd aware of the fact that Mr W was likely to need a care plan in place and was concerned about the funding of that. Mrs W explains that she looked into the availability of accessing local authority assistance with care costs. And she was aware that there was a financial assessment that, in the first instance would consider the capital value of savings. She says that she understood that Mr W's DB pensions, and state pension would be assessed as income. But she asked Ascot Lloyd, on Mr W's behalf, how the SIPP, which wasn't then providing an income, would be assessed. She says that she was told that it would be assessed as capital.

In September 2022 Ascot Lloyd provided a written recommendation for the use of Mr W's SIPP to provide a regular drawdown income to assist with care costs. The SIPP had a fund value around £146,000 at that time. It was estimated that a net monthly drawdown of £1,000 would be needed. So Ascot Lloyd recommended a gross monthly drawdown of £1,250. It stated that Mr W had no other means to raise the necessary funds and that he wanted to maintain the ability to flex his income so an annuity wasn't suitable. It didn't indicate what level of annuity may have been available.

Mrs W had to arrange the support of professional carers for Mr W to provide help when her work meant she was away from their home. Mrs W has provided copies of the invoices that indicate that from 10 September 2022 through to 22 December 2022 these costs amounted to £2,922.50. Costs that were averaging around £200 per week over that period.

In that time Mrs W, unfortunately had need to make changes to the care supplier. That meant an increase in the overnight care cost with her preferred supplier. In early December 2022 Mrs W emailed Ascot Lloyd to explain the anticipated increase in future care

costs. She estimated that cost to be £1,820 a month and asked about arranging an increase in the level of SIPP drawdown.

On 5 December 2022 Ascot Lloyd provided a written recommendation to Mr W regarding the potential increase in drawdown income. The SIPP had a fund value around £143,700 at that stage. Ascot Lloyd recommended a new monthly drawdown of £1,750. It explained that was not a sustainable level of income for the SIPP and that for a drawdown income to be sustainable the income should be limited to a maximum of £10,578 a year. But explained that Mr W had no alternative source of the additional necessary income. The recommended drawdown was put into place from 3 January 2023.

Around July 2023, Mrs W became concerned about the way that her husband was exclusively funding his own care. And sought alternative advice from a firm that were a member of SOLLA (Society of Late Life Advisers). That new adviser explained that, in a local authority financial assessment, the SIPP would be viewed as income. Where income was not being taken as drawdown already, it explained that it would instead be assessed on the annuity income that it would be able to provide.

Mrs W applied to her local authority for a financial assessment for Mr W's care needs. Mr W had a number of sources of income. He had two DB pensions, his SIPP drawdown income, state pension and attendance allowance. The initial assessment in August 2023 took into account the drawdown income that was being taken. It calculated Mr W's maximum weekly ability to pay as £710.13. So his personal contribution to his care costs was capped at that weekly amount.

In November 2023, after Mrs W provided her local authority with the value of the annuity that Mr W's SIPP could provide (which was lower than the level of drawdown that was being taken), a new calculation was carried out. That produced an 'ability to pay' figure of £498.97 a week. That was put in place from 13 November 2013.

Mrs W complained to Ascot Lloyd on Mr W's behalf. I summarise the points of Mr W's complaint as follows:

- She explained that Mr W had not applied for a financial assessment from the local authority because he was informed that the value of the SIPP would have meant that his level of savings disqualified him. Without the SIPP's value being counted in that way, his level of savings was significantly below the threshold. So it was argued that Mr W would've been entitled to a level of financial support for care costs. Mrs W argued that Mr W had unnecessarily taken drawdown income from October 2022 onwards that totalled £17,750.
- Mr W's health concerns were shared with Ascot Lloyd and it should have treated him as a vulnerable client. Mrs W expressed her concern that Mr W had fallen victim of a scam in March 2020 that used £10,000 that she thought was taken from his SIPP.
- The advice to take a drawdown to purchase a car was unsuitable, as no other funding options were considered. That income payment pushed him into the 40% tax bracket unnecessarily.
- Mrs W argued that Ascot Lloyd should compensate Mr W £17,750 for the unnecessary monthly draw downs and what she estimated was £5,400 paid for Ascot Lloyd's advice.

Ascot Lloyd considered Mr W's complaint and didn't think it should be upheld. I summarise it's view as follows:

- It had been told of Mr W's diagnosis in July 2020 and it agreed that he should be treated as vulnerable and that Mrs W should be present at future meetings.
- It had considered the request for the £24,000 drawdown in April 2021 and set out an action plan that was signed and agreed to.
- It considered its recommendation regarding starting a drawdown income to pay for care costs. It explained that, when assessing savings for a care financial assessment, the upper capital limit was £23,250. Its understanding was that the SIPP value would count towards that limit. So it didn't think there would have been any benefit in completing the financial assessment.
- It had no record of any recommendation being given regarding a £10,000 withdrawal from the SIPP that Mrs W had referred to.

Mr W's complaint was referred to our service by Mrs W. Our investigator looked into what happened and thought that Ascot Lloyd had, more likely than not, misled Mr W about the way that his SIPP would be considered in a financial assessment. He wasn't able to resolve the complaint informally however so the matter was referred for an ombudsman's decision.

I looked into what happened and issued a provisional decision where I set out the reasons I thought Mr W's complaint should be upheld, and what I thought Ascot Lloyd should do to put things right:

- I didn't think that Ascot Lloyd were responsible for Mr W losing £10,000 in a scam.
- I didn't think that Ascot Lloyd had caused Mr W to suffer any loss in bringing about his drawdown payment in order to purchase a car.
- I thought that Ascot Lloyd had made an error in the advice it gave Mr W in taking drawdowns from his SIPP to pay for care costs. I was of the view that it had most likely given Mrs W (as Mr W's representative) incorrect information that caused her to decide not to make an application for local authority financial support sooner.
- I considered the likely consequences, by taking into account the amount of the drawdown income taken and the likely level of 'self-funding' that the local authority would have expected of Mr W.
- Based on the evidence Mrs W had provided, I was persuaded that the actual level of care costs did not exceed the likely level of self-funding, up until the point that the local authority assessment was carried out. I explained that I didn't think Mr W had missed out on support towards his care costs at that stage, or that he'd had to pay more from his income than would otherwise have been the case.
- I thought that Mr W was impacted however where his initial local authority financial assessment had been based on the unsustainable drawdown income. I thought it provided an artificially high level of self-funding causing Mr W an indirect loss of income. Which I thought Ascot Lloyd should compensate Mr W for.
- I weighed the overall distress and inconvenience that Mr W had been caused and thought that an award for £750 was fair compensation for that.

Mrs W disagreed with the way that I'd suggested that Ascot Lloyd should put things right. In summary:

- Mrs W still thought that Mr W should be compensated for all the unnecessary drawdowns (£17,750) plus tax (3,459.80) from October 2022 to August 2023.
- Mrs W didn't think that it was fair for Ascot Lloyd to be able to keep the fees it charged where its advice was flawed.
- Mrs W didn't think that £750 fairly reflected the distress and inconvenience Ascot Lloyd caused. She explained that she was caring for her husband 24/7 whilst still working which caused her extreme exhaustion and stress.

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.

There were a number of issues that were raised in Mr W's complaint, although I think that the main issue of dispute relates to the fact that Mr W delayed applying for a financial assessment assuming that he had too much in savings to qualify. I will address the different issues separately as follows:

Are Ascot Lloyd responsible for Mr W obtaining £10,000 that was used in a scam?

This issue was addressed by Ascot Lloyd in its response to Mr W's complaint, which was then referred to our service. I therefore gave my opinion in my provisional decision that I had seen no evidence that Mr W took this £10,000 from this SIPP. I thank Mrs W for her clarification that she has not suggested that Ascot Lloyd facilitated this and it was referenced only to emphasise Mr W's vulnerability. It follows that I don't think it was in any way responsible for what happened to Mr W in that regard.

Was it unsuitable for Ascot Lloyd to recommend the use of drawdown to purchase a car?

Mr W contacted Ascot Lloyd in 2021 to request an income payment from his SIPP to purchase a car. It is evident that this was a genuine objective that Mr and Mrs W had.

Ascot Lloyd's role as a financial adviser wasn't to tell Mr W how to spend his money. But it ought to have considered the stated objective and made a recommendation, setting out the implications. I am satisfied that, in the main, it did this. It had carried out fact-finds so was aware that Mr W did not have other savings or means to fund that purchase without either taking out a loan or making a taxable drawdown from his SIPP.

Ascot Lloyds recommendation letter of April 2021 explained that Mr W had previously taken his tax free cash entitlement. So it was evident that Mr W would be taxed on the full value of his drawdown. And the £30,000 drawdown was taken by Mr W with that in mind. I think that Ascot Lloyd's recommendation showed poor attention to detail. It assumed, incorrectly, that Mr W would be taxed at 20% on that drawdown. And that was what was explained to Mr W. But it was aware that Mr W's existing income was around £25,000 before this one off drawdown. And it should have been aware that a drawdown of this size would have pushed Mr W's earnings to around £55,000 that tax year, so into the 40% tax bracket, for part of it. It meant that its recommendation led Mr W to expect a net payment of £24,000 which was not accurate.

I am not persuaded that the impact of this was that Mr W would have taken a smaller payment though. I say that because, the net payment received was still not enough to purchase the car chosen. Mrs W has explained that they had to use money from elsewhere. So the preference was still to purchase the car intended rather than settling for a cheaper

one. I do however think that this error would have caused Mr W distress and inconvenience at receiving a lower net payment than was expected and then having to find out why and then make alternative arrangements to bridge the gap. So I will factor the impact of this as part of the combined award for distress and inconvenience I make at the end of this decision.

Did Ascot Lloyd provide unsuitable advice to take monthly drawdown?

For similar reasons that our investigator has already given, I am persuaded that Ascot Lloyd gave Mr W unsuitable advice. I make this decision based on what I think most likely happened on a balance of probability.

Mrs W explains that she contacted Ascot Lloyd when it became apparent that she would need to put care in place for Mr W. Ascot Lloyd have not shared any call recordings or call logs for any of the contact it had with Mrs W. But Mrs W's testimony is quite persuasive. She explains that she had already looked into it and had some understanding that there would need to be a financial assessment before any assistance would be provided for funding care. And Ascot Lloyd's adviser's testimony is that he told her that he would speak to one of its SOLLA advisers about it. So I think that this tends to support that Mrs W sought advice on what options there were.

I understand that it was not Ascot Lloyd's role to make an assessment of what level of funding assistance Mr W might be entitled to. But giving a suitable recommendation about his income needs would require an understanding of his circumstances. And the fact that Ascot Lloyd said it would seek appropriate guidance from an adviser that had expertise in later life advice would have been reassuring to Mr and Mrs W. And I think that it would have given them cause to suppose that any recommendation they received would be based on that expertise and Mr W's circumstances.

Mrs W says that she was told that the SIPP fund value would be treated as a capital sum as opposed to income. And I am persuaded that she was. This is because, in the recommendation that was given to draw down income from the SIPP, Ascot Lloyd understood the objective was to raise funds to pay for care costs. And it stated that there was no alternative to raise funds. But that may not have been the case if it had correctly understood the way that the SIPP would be assessed. I think that it gave misleading advice because it got this wrong. Although Ascot Lloyd has provided no call or meeting records, so I cannot know exactly what areas were covered, I have seen the explanation that Ascot Lloyd gave in its response to the complaint. I would expect that explanation to be consistent with the explanation Mrs W received previously given the context. And I think that the explanation it gave after the complaint was incorrect. It still told Mrs W that the SIPP fund would have been treated as savings so it would not have been worth getting a financial assessment. This was simply incorrect. And, persuades me that it, more likely than not, provided an incorrect answer to that question prior to putting the drawdown income into place for Mr W.

I cannot necessarily infer that Ascot Lloyd told Mrs W not to apply for a financial assessment. But I think the impact of Ascot Lloyd's incorrect information would, quite reasonably, have caused Mrs W not to apply for one. It was evident that she was aware that savings over a certain value would mean that Mr W would not qualify for assistance. And Ascot Lloyd's failure caused Mr and Mrs W to consider that Mr W was significantly over that level of savings with the SIPP fund value.

For the reasons I have set out, I don't think that the recommendations that Ascot Lloyd gave Mr W in September 2022 (to take a monthly drawdown of £1,250) and in December 2022 (to increase the monthly drawdown to £1,750) were suitable. It had not fully considered whether Mr W's new circumstances which would have required an understanding of the implications

of care, and of any financial support he was entitled to. It was also likely that taking these sums were not likely to be sustainable for Mr W's SIPP fund. That level of income was more than the annuity that would have been available (although I cannot see that Ascot Lloyd fully considered that or provided that comparison). Which would have the foreseeable impact of putting an unsustainable income into place for any subsequent financial assessment.

Putting things right

I have considered everything in this case, including Mrs W's most recent representations, when deciding a fair and reasonable way to direct Ascot Lloyd to put things right. I understand that the managing of care for a spouse is stressful and I do not underestimate the difficult position that Mr and Mrs W were in. But I need to separate the stress and inconvenience that Mr W's illness and need for care would have had, from the extent to which the incorrect information, that Ascot Lloyd gave, contributed to that stress. So, for the reasons I will again explain, I have not changed my mind on how Ascot Lloyd should compensate Mr W.

I see that Mrs W has repeated her case that Ascot Lloyd should compensate Mr W in full for the drawdown income that he took from his SIPP for care costs. But I don't think that is fair or reasonable. As I explained previously, such an approach supposes that Mr W would not have had to take any income from the SIPP to pay for his care if Ascot Lloyd had not made its mistake. But, based on the evidence Mrs W has shown me, I don't think that was ever a likely outcome. I base this finding on the financial assessments that Mr W received from the local authority and the care costs incurred, as I will explain.

The most recent assessment I have seen, that appears to be based on the annuity that the diminished SIPP fund would provide, still meant that Mr W's contribution to his care costs was nearly £500 a week. I think that a calculation prior to the impact of the drawdown income (when the SIPP fund was larger) would likely have taken into consideration a slightly higher annuity and therefore have resulted in a slightly higher expected contribution from Mr W towards his own care costs.

I have seen copies of invoices for the ad-hoc care costs that Mrs W says she was paying for from the SIPP drawdowns. But I cannot see, from the records provided, that the costs exceeded £500 a week. I am also considering Mrs W's estimate of costs in the region of £1,820 that necessitated that increased drawdown. This is of relevance because, as I say above, I think that the likely result of an earlier local authority financial assessment would still have meant Mr W's contribution to costs being in the region of £500 a week.

I understand that Mrs W was likely providing a significant amount of care herself and that would undoubtedly have been hard work which placed stress on her. But, from what I have seen, I don't doubt that Mrs W took the care of Mr W seriously and was acting in his best interests. So I don't doubt that the care costs that were incurred were necessary, but also were adequate for his needs at that time. I take into account that, it is not the concept that Mr W may have to pay towards his care that has been objected to. And the SIPP had further funds, and at the time of taking the drawdowns Mrs W considered that additional income was needed to cover the costs. So I think that, had the necessary care costs been greater, Mrs W would have paid that cost, by a higher drawdown if necessary.

I do not underestimate the impact of having to find such significant costs within the normal household budget. But the significance of understanding the actual costs incurred is that I must compare that with the likely contribution level that an earlier financial assessment would have produced. Given that the costs incurred were less than what that would, more likely than not, have been, I can't say, on a balance of probability, that Mr W lost out on available assistance. Which means that the costs that were incurred would always have

been met by Mr W up until the point of the financial assessment and subsequent increases in care costs. This cost would need to be met from Mr W's income that could have come from his existing pension income or from the SIPP drawdown. That decision was one for Mr and Mrs W to make. This is why I do not consider Mrs W's view that Ascot Lloyd should refund it the cost of drawdown to be reasonable. That would be akin to asking Ascot Lloyd to pay Mr W's care costs in circumstances where I am not persuaded that the local authority would have instead met those costs.

Where I think that Ascot Lloyd's mistake caused Mr W a loss was at the point that the drawdown income that was taken had an adverse effect on the financial assessment. It had the consequence that Mr W had to contribute £710.13 a week from his income rather than £498.97. Whether Mr W had to pay this higher cost depends on what the costs rose to. I think it would be fair and reasonable for Ascot Lloyd to compensate Mr W for the extra contributions he paid, in each week where Mrs W can demonstrate that he had to pay this higher sum. As this was lost income Ascot Lloyd should add 8% simple interest to the compensation from the date that the higher payment was made by Mr W until the date of my final decision.

I note Mrs W's explanation about the impact that caring for Mr W had on her. And I certainly sympathise with the position she was in and the difficulties she must have faced. But our investigator already explained to Mrs W that our service's power to award compensation includes the ability to compensate for distress and inconvenience that the consumer was caused. And the consumer in this complaint is Mr W. But, when determining compensation I have been mindful of the likely impact on Mr W of the distress that Mrs W was caused in applying for the financial assessment late and then having to sort out the drawdown income discrepancy. So I still think that the problems caused by poor information and recommendations given from Ascot Lloyd had an impact on Mr W. He was already vulnerable and yet he was caused distress and inconvenience regarding the £30,000 drawdown as I mentioned earlier. The information he was given was incorrect and caused him to have the wrong expectation about the impact of tax. Plus the problems caused by Ascot Lloyd's lack of understanding about how the SIPP would be valued in a financial assessment caused significant issues. It necessitated Mr W seeking alternative advice and then having to go through a financial assessment twice to rectify the issues that the unsustainable drawdown income had on the first assessment. For the combined distress and inconvenience I think Mr W should additionally be paid £750 in compensation.

I have set out above how I think that the impact of the mistakes that Ascot Lloyd made can be addressed. I am not asking Ascot Lloyd to refund the fees that were taken. This did not cause a loss as it was a cost that Mr W would always have incurred as part of his ongoing service. Even though some of the information that was given was flawed, it is evident that Mr W wanted financial advice, and, would always have been in the position of having paid for that ongoing advice.

Ascot Lloyd must pay the compensation within 28 days of the date on which we tell it Mr W accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date it is told that my decision has been accepted to the date of payment at 8% a year simple interest.

Should Ascot Lloyd decide that it should deduct tax from the interest it should tell Mr W how much it has deducted for income tax and provide a tax deduction certificate if Mr W asks for one so that he can reclaim the tax from HMRC if appropriate.

My final decision

I uphold Mr W's complaint for the above reasons and direct Ascot Lloyd Limited trading as

Ascot Lloyd to put things right as I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 23 July 2025.

Gary Lane
Ombudsman