DRN-6200736

Financial Ombudsman Service

The complaint

In May 2023 X and London Stone Securities Limited ('LSS') entered into a discretionary trading/investment agreement. He deposited around £100,700, the trading was done on a third-party's platform, and the arrangement lasted less than a year (with trading beginning almost immediately and ending in March 2024).

He says LSS breached all key aspects of the arrangement's mandate – mainly, his low to medium risk profile, his dividend income and steady capital growth objective, the passive investment strategy he instructed, and cost efficiency on fees/charges. He also says erroneous fees were deducted and that LSS *churned* his account for income from trading charges, through High Frequency Trading ('HFT') and short-term investments.

LSS disputes the complaint. It says X's account was conducted with his ongoing oversight and involvement, and exactly as its mandate dictated, and that one fee applied in error was refunded to him.

What happened

I issued a Provisional Decision ('PD') for the complaint on 19 February 2026. I provisionally concluded as follows –

"… *I am not persuaded to uphold X's complaint – other than in relation to possible grounds, depending on the parties' responses to this PD, to order a refund of the £1,600 charge (or part of it), for reasons I explain later*."

The PD's summary of the background included the following –

"*X summarised the following –*

"I deposited £100,672.69 into the account (The first investment purchase was carried out 10.05.2023). Management Fees of £2,013.59 were taken from the account (for period 10.05.23 - 10.05.24) Trading fees of £12,528.97 were taken from the account A total of 112 trades were carried out Trades totalling £777,056.50 were carried out. (very nearly 3/4 of a million pounds) Many investments were held for very short periods, sometimes just a few days. (Sometimes with trading in and out of the same investments). Investments lost 13,192.28 in value in addition to fees charged."

Both parties have referred to documentation agreed at the outset of the arrangement which, they say, defined its overall terms. They have also presented their respective submissions on what was agreed, which conflict with each other. I will summarise the documentation first, for context, before doing the same with their submissions.

X has referred to a copy of the third-party platform provider's "Customer Due Diligence Information" (or 'CDDI') document, which he says was agreed for the opening of his platform account for the arrangement. He says this document shows the mandate for the account. The CDDI confirms that the account is for a private individual, that the level of trading should be between 1 to 5 transactions per month, that the initial trading capital will be from

transferred assets, and that there will be no ongoing funding of the account or withdrawals from it, but 'source of ongoing funding' is stated as 'salary'.

The CDDI is signed by X, and it is dated 21 December 2022.

LSS has presented a collection of documents from its records, which can be summarised as follows –

- *Its terms and conditions document (the 'terms').*
- *An 'Investment Strategy' document signed by X and dated 8 May 2023.*
- *A 24 pages long Private Client Profile ('PCP') document containing X's details and his answers to questions related to the mandate for the arrangement. LSS says this is the main mandate document. It is accompanied by an electronic 'Certificate of Completion' with X's e-signature, that refers to the PCP and that confirms he completed the PCP online on 8 May 2023.*
- *An undated 'Discretionary Trading Account' agreement, with X's signature.*
- *A 'Schedule of Charges' document.*
- *An 'AIM Strategy' document with X's signature, dated 18 May 2023.*
- *LSS' Key Information Document.*
- *An undated Suitability Report ('SR').*
- *A pro forma Risk Warning Disclaimer document.*
- *A notice about short-term trading sent to X on 4 August 2023, and a notice about HFT sent to him on 18 September 2023.*

The arguments from both sides are detailed, it would be impractical to present them all, so instead I will reflect their highlights.

X says he was induced by the contents of LSS' website to engage its services, because he considered that it offered the type of approach he was looking for. He recalls making his requirements (low to medium risk profile, dividend income and steady capital growth, passive investment strategy, and cost efficiency on fees/charges) clear to LSS and receiving an assurance that it could and would meet them. The relatively cautious approach he stipulated was, he says, borne from the fact that his capital was from long-term savings, built over many years, so he needed an element of capital protection in the trading approach.

X's allegations are mainly as stated at the outset of this PD, alongside the summary from him quoted above. In addition to his overarching argument that his account was churned and mismanaged, sub- issues he has presented include – his unhappiness with underperformance in the account, resulting in a loss in value of almost £30,000; advance trading fees of £1,600 deducted from the account on 28 February 2024 for trades he says never happened; further unhappiness with a 13 March 2024 deduction of LSS' management fees (£3,166) for a second year of service, even though he had not agreed to extend its service (the deduction was later refunded); and his allegation that it breached his instruction against making new buy trades from January 2024 onwards.

LSS says –

- *In terms of suitability of the trading account, and based on information he presented at the outset, X was a sophisticated, experienced and knowledgeable investor with significant financial capacity – he had no liabilities and the trading account held less than 20% of his liquid wealth (excluding his unencumbered home, valued at around £950,000). He agreed to take some higher risks for the chance of higher returns. He did not rely on the capital outlay (which came from existing investments), and he knew (and agreed) the risks in the venture.*

- *The onboarding documentation clearly establishes the mandate that was agreed. The facts of the trades within his account show they were reasonable in the circumstances, and that the mandate was complied with. The mandate and trading facts also show that his core allegations about mismanagement and churning are unfounded. The trading was conducted with his oversight, ongoing communications with him and strategy agreements with him, and he never raised an objection until he perceived an underperformance and then, shortly afterwards, stopped the trading.*

The costs in the arrangement were transparent to, and agreed by, him at the outset; the £3,166 charge was refunded to him on 27 March 2024, so it is a non-issue. The £1,600 charge related to 16 open positions in the account at the time. The arrangement included an exit charge of £100 per position (for sale or transfer), so the £1,600 charge was retained for these positions, it was bound to apply to their sales and/or transfers regardless of what X chose to do with the account."

The PD's findings were –

"*An immediate finding to make is that the CDDI seems to be unreliable evidence, with regards to the arrangement between the parties. I have given it no weight. In contrast, evidence of the onboarding related documents listed above appear to hold credibility and relevance to the complaint, especially as many are signed by X.*

The CDDI is dated 21 December 2022, so it predates the onset of the arrangement by around five months. It is also a document that belongs to the platform provider, not LSS. Its contents are as summarised above. I can understand why the investigator took the view that they support X's claims, but the unavoidable problems for this document remain the facts that it was signed around five months before the agreement between both parties and it is unrelated to LSS. As far as I can see, LSS is not even mentioned in the document.

The story behind it is not clear. I have considered the possibility that it might have been something X executed early in his journey towards appointing LSS. Even if that is the case, at best it does no more than depict what he wanted as of December 2022. The CDDI's contents are not consistent with the signed onboarding documents LSS has referred to, as will become apparent in my provisional findings below. Therefore, remaining with the same possibility, the implication that arises is that by May 2023 X wanted and agreed something different.

The terms explained the purpose of the PCP as follows –

"Where you register as a client for the first time, your broker will ask a series of questions to ascertain your appetite for risk, investment objectives and financial status. This is your PCP and gives you the opportunity to inform your broker of the types of investments and markets that you wish to invest in. It is your responsibility to notify your broker if any of your chosen parameters or circumstances change. This document will supersede any information that you have provided on the Client Information Form."

As mentioned earlier, the PCP is detailed (24 pages). It also refers to the terms.

In it, X confirmed he had 30 years of experience in share dealing (including extended settlement trading), fixed income securities and funds; and 10 years of experience in trading Alternative Investment Market ('AIM') shares, Contracts for Differences ('CFDs'), other margin-based products, spread-betting, initial listing stocks, and options.

The document says he wanted an advisory relationship, and that he had very good knowledge, and experience/understanding, of the stock market, trading risks and general financial/economic affairs. It also confirms he was prepared to undertake short to medium term trading in the FTSE100 and FTSE250, but he wished to discuss further with his adviser in relation to anything more speculative than these (whilst also being open, in principle, to a small exposure to higher speculative risks – up to 5% of the account). He was flexible towards investment strategies, depending on the state of the market, and his attitude towards holding cash was that he was comfortable in doing so and he did not always feel the need to be fully invested.

His financial profile is presented in the document as LSS has described. There is an objectives section in the document, in which X asked for income and growth. Notably, this section declared LSS' trading strategy as follows – "We specialise in short to medium term equity trading within FTSE100 & 250 companies. Therefore, our goal is to offer our clients an overall return (made up of capital appreciation and dividend income). Can you confirm that this strategy is suitable to you and that you are not looking only for income?"

In response, he said "yes".

The SR repeats, in summary form, most of all the above.

Taking all this evidence into consideration, I am satisfied that the trading account was suitable for him. He had an overall investor profile in which there was financial capacity for the capital outlay, in which he appears to have been vastly experienced in investing and trading, and in which he sought and/or was comfortable with the type of trading that LSS offered.

Having initially asked for an advisory relationship, it appears that X decided to put in place a flexible discretionary arrangement for the account. The Discretionary Trading Account agreement he signed includes – "The firm will take charge (until further notice from the client) of all investment decisions …"; "… shall select investments that it reasonably believes is suitable for the client, according to … the Private Client Profile (PCP), any other information provided by the client, and any factors the firm deems important at the time of the transaction (e.g. market conditions, tax considerations etc.)."; "The client has the right to cancel this agreement at any time with no associated penalties, costs or lock-period …"; "It is the client's responsibility to regularly check the account (at least monthly) to ensure that it is being kept in line of his/her objectives and that there are no erroneous entries."; "If the client is unhappy with any transactions executed, this must be raised by the client within 30 days of the trade date."

This document also confirmed that he agreed to "any" maximum number of new opening trades per month. The options for "1-5" and "6-10" were not selected.

Returning to the PCP, and with regards to strategy, it says –

"We will also sometimes add to a position in tranches, this is called 'averaging up' or 'averaging down'. This means that you may hold a much larger position than your original deal size."

and

"Our strategy is to trade in and out of blue-chip shares looking for short term capital appreciation. This means that we might buy and sell the same company within a few days or weeks if it gives a reasonable profit … There will also be some days with a high number of

trades executed (e.g. if the market moves up or down significantly in a single day), and on other quieter days there will be no trades executed at all. Can you confirm that you are happy with a frequency of trading that fluctuates according to market conditions?"

In response, X said "yes".

There is a section on fees, which includes – "Advisory trades are 1% of the deal size (min. £100)."; "Discretionary trades are 1% of the deal size (min. £100)"; "There is an annual fee of 2% for year 1, and 1% for each year thereafter."; "The full list of fees is in the Schedule of Charges and further details are in the Terms of Business. Please confirm that you have read and agree to the charges." [my emphasis]

In response to the sentence emphasised, X said "yes". There is a further illustration in the document clarifying that the trading fees apply to entry and exit trades separately.

The concluding declarations by X in the PCP were –

"I accept the risks of trading in individual company shares in the FTSE100 & 250
I am comfortable with a short-medium term trading strategy (days, weeks, months)
I am comfortable with a variable frequency of trades depending on market opportunities
I deem myself suitable to London Stone's equity trading strategy as described in this document
I understand that past performance is no guarantee of future success
I will only invest money that I can afford to lose ("risk capital")
I have sufficient financial liquidity so not to rely on my London Stone portfolio to support my lifestyle
I will check all trades immediately and highlight any issues/concerns to my advisor
I will speak to my advisor before my portfolio drops below my TCL
I will inform my advisor if my circumstances change
If I have any doubts I will seek independent financial advice"

Separately, the Investment Strategy document he signed essentially repeated the same type of trading parameters (as well as information on associated risks), and included – "I understand that a high frequency trading strategy will incur higher commission fees whilst a low frequency trading strategy will incur less commission fees."

There is even further reconfirmation of the strategy (and associated risks and increased costs) in the terms, within its "Short Term Trading Strategy"/"High Commissions" and "Justification of Trades" sections.

The AIM Strategy document X signed confirmed, specifically, that he wished to use around £16,000 out of the account's capital to trade/invest in AIM stocks – in a total of six positions – for the chance of "higher capital growth".

I have looked into evidence on the trading activity within his account. Overall, that activity behaved in line with the parameters set by all that I have addressed above. I deal with this in further detail later, at present I will summarise a high-level view.

Despite the arrangement becoming a discretionary one, there is evidence of X being involved – through enquiries of his own and through contacts from LSS – in the account's overall trading journey. As LSS says, emails were sent to him, about short-term trading and HFT, on 4 August 2023 and 18 September 2023. Trading was already underway in the account at these times. They were sent in response to the state of the markets and they

reminded him that either or both strategies were to be used. Both emails invited him to confirm his objection if he wished, but there is no evidence of such objection from him.

LSS sent him market commentary emails from time to time. We have copies of examples in August, October and November 2023. Each included concluding standard reminders about the 1%/£100 minimum trading charge per entry or exit trade, about the need to monitor the account and promptly highlight any problems, and the following – "If you are unhappy with the performance of your shares and would like to change strategy, please email …". [my emphasis]

This brings me to what X had to say about concerns in the arrangement, as it was ongoing. In his submissions, he reproduced an email that he appears to have sent to LSS before the arrangement was reached. In it, he says he had been managing his portfolio himself until 2019 but no longer had time to do so, and that he wanted a steady return without undue risks. However, by the time the arrangement was reached with LSS in May 2023, the terms and parameters he agreed are as I set out above, and they were different.

It looks like his concerns, within the arrangement itself, were first conveyed around January 2024, when he asked LSS to continue with its discretion on sale trades but to contact him first before any purchase trades were made. He had to repeat this request twice, before writing a third time because a purchase trade appeared to have been made without his consent. His submissions reproduced LSS' response, including –

"The account is currently set up as fully managed/discretionary. We have certain orders and positions running, for buy and sell, at specific prices/levels. Some of these are automated and so once it hits a price the trade is executed. It would be very difficult to cancel all of them and reinstate them all later."

"… we dont really have the ability to monitor a portfolio in the way that you are suggesting. There are buys that we have lined up that will get triggered. If we cancel them then it potentially also upsets the other stocks we are holding … I dont think thats a good idea. I would suggest we speak urgently and find best way forward, of course something that youre happy with."

X maintained his request thereafter, and he is unhappy it was not adhered to. This ran into February 2024 and by March 2024 trading in the account ceased.

On balance, I find that both sides' approaches could have been better.

I am not persuaded that LSS could not have simply suspended any and all new opening trades that were planned (including deactivating any that were automated) and then discussed each with X for his consent before taking any further action. After all, he repeatedly and explicitly made it clear that was what he wanted.

On the other hand, he had agreed a discretionary service in which LSS had full discretion in the account's trading (so long as it matched the mandate). In this context, there is ground for LSS to contend that it was not obliged to yield to his request, and that if he no longer wanted to delegate discretion the terms of the discretionary trading agreement allowed him to cancel at any time and at no cost.

This arguably shifts the problem back to X. He was either concerned about the arrangement at the time or he was not. If the former, I consider it reasonable to expect that he should have cancelled the discretionary trading agreement, and reverted to the initial 'advisory' basis that the PCP confirmed.

Evidence shows that was possible at any time. In which case, advice could have been taken on the management and/or closures of existing trades, and advice could have been taken on any new opening trades LSS sought to recommend – and no implementation would have happened without his prior consent. With his level of investment/trading experience, I am persuaded that this is an approach he ought reasonably to have applied, if he was concerned about the discretionary arrangement. Even if the cancellation was to be an interim measure, whilst he and LSS reviewed and perhaps revised the discretionary arrangement.

Instead, X wanted suspension of the discretionary arrangement for the opening of new trades, but he also wanted its continuation for the trade closures. This hybrid was not the discretionary trading service he agreed. Whilst I think it would have been a sensible and perhaps pragmatic option for LSS to suspend, and then consult him on, new trades as he requested, in the absence of a cancellation of the arrangement and without a breach of the mandate, I am not quite persuaded that it was obliged to do so.

On balance, I am also not persuaded that the trading activities breached the mandate or that the account was churned.

The notices and agreements I dealt with earlier all show that X wilfully entered into circumstances in which unlimited short-term trading and HFT would be conducted in the account, designed mainly to time and chase the markets and to be reactive, in the short-term, to news, events and trends in the markets.

Increased trading costs were very obvious in this set-up, and, as mentioned above, they were repeatedly stated to him as warnings, as an element that should be expected and as an expectation he was asked to acknowledge and agree (which he did). No performance guarantees were given, so there were no grounds to expect that the impact of the increased trading costs will be covered by gains, and part of the known risks would have been the potential for trade losses to be compounded by the increased trading costs. None of these was unknown to X, and none was in conflict with the overall terms and mandate he agreed. Instead, they were part of the risks he undertook in the arrangement.

Therefore, the circumstances of his case are not aligned with those commonly found in churning cases, where, for example, frequent trading is without an agreed basis or good reason, and/or where it conflicts with an agreed mandate. Of course, this does not automatically mean X's account could not have been churned. The possibility arguably remains, so, using the transactions statement, I have looked into the trades conducted in it.

The account was funded with around £100,700 capital, and trading began on 10 May 2023. Six different purchases (in different AIM stock) were made on this day, using around £15,000 in total. By the end of the month a further eight purchases (in different holdings) were made, using all but around £1,000 of the remainder capital. LSS says the six AIM stock purchases were in fulfilment of the AIM trading instruction, for exposure to up to six AIM positions, X agreed. I also note that the total spent in the trades was within the £16,000 cap agreed in the AIM strategy document. The other eight trades appear to include FTSE 100 and FTSE250 stock, which he also agreed to invest in.

Only one transaction happened in June – the full sale, at profit, of one of the May purchases.

In July there were partial sales of some of the May purchases. Buy trades then resumed in August, which looks to have been an HFT month (and the beginning of more frequent trading in the account), with a combination of numerous buy and sell trades totalling 22. I do not have enough information to consider the rationale behind each trade individually.

However, LSS' market commentary email to X on 11 August 2023 gives an overview of the trading approach in this month.

Around 16 of the trades consisted of holdings bought and sold within the same month, one was sold over two tranches, but the others show sales of only around half of each original holding. LSS' 11 August explanation for this included –

"We have also found that risk can be best managed by reducing the deal size and selling in tranches. Not all clients like this approach … If you feel this way, please let us know and we can sell in whole tranches rather than to split up positions. This will reduce the number of trades and therefore costs, but also means that it is more of a "all or nothing" strategy." [my emphasis]

and

"Selling half tranches also works particularly well for stocks which have gone ex-dividend, where we feel that there is scope for further upward price movement, but where there is also risk that the stocks continue to fall."

This shows that the approach was reasoned, that X was informed as the trading was happening and that, if he disagreed with the approach, he was given the chance to stop it. The email also drew his attention to how avoiding sales in tranches would reduce costs. There is no evidence that he replied to object to the approach. Overall and in these circumstances, I do not find grounds to conclude that the 22 trades churned his account.

LSS' market commentary email of 25 August 2023 essentially signalled a continuation of the same approach going forward, and the transactions statement broadly shows that happening for the rest of the year. Its market commentary emails in October and November 2023 also conveyed its intention to seek and exploit opportunities to exit poor positions and enter good ones within the wider strategy, and in the context of prevailing problems in the markets. Many trades were conducted during this period, but, overall and on balance, I consider that they reflected the strategy LSS had conveyed to X in its market commentary emails, none of which he disagreed with at the time.

Eight trades were conducted in January 2024, six in February and three in March, when trading appears to have stopped. I do not have evidence of any specific trading rationale for these months, but as I mentioned above X began expressing concerns in January, after which the activities started winding down. This is indicated by the reducing number of trades per month, and perhaps by the fact that in the total of the 17 trades during these months 11 were sales. These trades do not appear to indicate churning, which would arguably have been particularly unlikely during a period in which X had begun raising his concerns.

Overall, on balance, and for all the above reasons, I do not find that his allegations of mismanagement and churning are supported by evidence.

On the matter of fees, the £3,116 charge was deducted on 13 March 2024 and refunded on 27 March 2024. I agree with LSS that this is no longer a relevant complaint issue, as it has been resolved.

The £1,600 charge was deducted on 28 February 2024. As far as I understand it has not been refunded. LSS' argument on this is supported, in principle, by the terms agreed in the PCP (and schedule of charges), in the sense that if, after the end of the arrangement, it nevertheless conducted work in closing the relevant 16 existing trades then it was/is entitled to apply the minimum agreed exit transaction charge of £100 per trade, hence the £1,600 total.

However, if in reality, after the end of the arrangement, LSS was not involved in the management and/or closure of the relevant 16 trades, perhaps because X dealt with them himself, then it has not performed any work to justify the £1,600 in charges and the deduction should be refunded. The same applies if the actual number of the relevant trades is below 16 and if they were closed by LSS, in which case there would be an overcharge for the difference (where no work was done to justify the charge), which should be refunded.

We do not appear to have enough evidence to clarify which of the aforementioned scenarios has happened, so I cannot make a definitive finding. For this reason, I ask both parties to provide their comments on and clarification of the matter in response to this PD. The possible outcomes are as summarised above, so depending on which scenario applies I may or may not make an award for a refund of fees (either the full £1,600 or any overpayment element within it) in my final decision.

The last point to address is X's unhappiness with the performance of the account. No performance guarantee was given to him. The risks inherent in the account's trading were known to and agreed by him. Where performance problems have been caused by unsuitable advice from and/or mismanagement by a firm there could be ground, depending on the circumstances, to consider holding the firm responsible. As I have provisionally found above, neither has been established in the present case. Beyond such matters, any alleged underperformance resulting from wider and general market and economic conditions beyond LSS' control cannot reasonably be deemed to be its fault."

Both parties were invited to comment on the PD. No response appears to have been received from LSS. X provided a very detailed response. His main comments are –

- His completion of the onboarding documents was done under influence from LSS, and with its involvement. In hindsight, it is apparent to him that LSS applied its influence in order to manipulate completion of the documents in a way that would generally absolve it of future responsibilities.

- "*All communication and evidence confirmed that the strategy agreed would be to help build a portfolio of dividend producing shares, that was fairly passive in nature, without large swings in value and with steady capital appreciation. There was never any discussion or evidence to support that a HFT account was agreed.*"

- The CDDI is relevant. His journey towards engaging LSS' service began in December 2022, when he spoke with LSS' principal ('the principal') and received the CDDI from the third-party platform provider (associated with the potential use of LSS' service). He completed the CDDI as he wished, so the PD's finding that it depicts what he wanted as of December 2022 is correct. This is further supported by relevant contents of LSS' website (which induced him to believe it offered the type of service he wanted, as he described in the CDDI), and by the contents of his email to LSS in January 2023 (which were also consistent with his description in the CDDI).

- However, the PD is wrong to say he wanted something that differed from the contents of the CDDI by May 2023.

- He completed and agreed the PCP as it presently exists. However – "*This document was described … as a generic document for all LSS clients, it was completed in the clear understanding I would have an advisory account. As such I would have control to accept or decline any of the above investments options. Being a generic document for all clients I was on the clear understanding that some parts of this document*

would not be applicable as [he and LSS] *had an agreed strategy of building a fairly passive portfolio of dividend producing shares*."

- He had neither experience nor interest in HFT.

- He also completed/agreed the terms, the Investment Strategy document, the Schedule of Charges document, the Key Information Document and the SR. However – "*I discussed these forms with LSS as some of the items were not applicable to* [his] *account, I was assured these were general forms and only the relevant items would be applicable to my account and its strategy … These forms were completed, where applicable on 8th May 2023 … I was not concerned as I had clearly discussed and agreed the strategy to be applied ...*". Similar points apply to the AIM Strategy document, which he also completed and agreed.

- With regards to the Discretionary Trading Account agreement – "… *this document was something [the principal] instigated and insisted on being signed. I was certainly not under any impression that LSS would change the strategy … agreed on … conversations still revolved exclusively around the building of a portfolio of dividend producing shares with low volatility in capital value. Had* [the principal] *given any indication that he intended to completely change strategy and implement HFT* [X] *would certainly have objected to that.* [The principal] *clearly followed the agreed strategy until August* …". As found in the PD, he continued to be directly involved in the account's trading activities, so this shows the advisory basis remained broadly unaltered, despite the Discretionary Trading agreement.

- The principal suddenly deviated from the agreed strategy in August 2023.

- "*I discussed with* [the principal] *my concerns regarding the sudden trading. I did not agree to HFT during this call, or at any point prior or after this time … From this point on* [the principal's] *attitude seemed to change and he became very defensive and kept saying it was nothing to worry about and he needed the full 12 months to complete the strategy agreed*."

- "*It is not correct that my concerns were first conveyed around January 2024, these concerns were ongoing from August 2023 …* [the principal] *would continual requests to discuss matters on the phone. We discussed the account many times, each time* [the principal] *was very defensive and overbearing. Most times he would turn the conversation to trying to get me to invest further funds with him. Clearly something I was not interested in given my experience so far.*"

- LSS' email to him of 10 August 2023 confirms, up to then, the agreed strategy was and remained as he has described. He never agreed a change to the strategy, but LSS unilaterally applied a change in the same month, which continued thereafter.

- "*Ongoing valuations continued to state the strategy was to hold losing shares and collect dividends, and only sell winning shares*."

- He understood and accepted the fee structure. With regards to the £1,600 charge, he accepts that LSS closed three of the relevant trades, but it did not close the rest.

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 have also considered, in detail, X's comments and evidence in response to the PD. Having done so, I have not been persuaded to depart from the PD's findings. I retain those findings and incorporate them into this decision. With regards to the £1,600 charge, the outcome I have now reached is within the scope provided for in the PD.

Overall, X's comments assert that – all the completed and agreed documentation in his case, on which the PD's findings and conclusion have been reached, do not present the reality of the facts; some do (for instance, the CDDI, his initial emails to LSS and the correspondence that referred to holding losing shares and selling winning shares); but some do not (for example, and especially, the Discretionary Trading agreement); and for some of those that present the reality of the facts, there are aspects that are not fully reflected within them (for instance, his agreement to some terms in the belief that he retained discretion to ensure they never applied).

I understand his main submissions, and I consider that he has conveyed them well. However, for the following key reasons I am not persuaded by them –

- As X concedes, the CDDI depicts what he wanted in December 2022. Even if I consider and/or accept his argument that he continued, into early 2023, to want what is expressed in the document, the fact remains that by May 2023 he completed, agreed and signed a collection of documents that had terms and strategies which differed from what he expressed in the CDDI. Another fact is that LSS was not party to the CDDI, so the document is irrelevant to determining the terms X agreed with LSS. My finding on this document remains broadly the same as stated in the PD.

- There is available evidence that conflicts with the notion, or suggestion, that X was unduly influenced to agree any of the terms, documents or elements of the account's mandate. Some of that evidence is within his comments on the PD. On balance, I am not persuaded that he was unduly influenced in this respect.

- He was a significantly experienced investor, with decades of experience in the different investment areas he confirmed in the PCP. In this context, it is more likely (than not) that, with such a profile, X would have been distinctly aware of what he wanted, what he was prepared to agree to and what he was not prepared to agree to – and, it seems unlikely that he would have been manipulated against his better judgments in these respects. Indeed, as an example, his comments refer to an early attempt by LSS to transfer-in more ISA holdings than he wished to be transferred. He describes how he spotted this, wrote to LSS to affirm what he did and did not want transferred and rejected the principal's attempt to convince him otherwise. It is also a part of his case that he intervened to restrict the trading parameters in early 2024, when he took the view that trading was not happening as he wanted.

- X might have considered ideas initiated or suggested by LSS and, perhaps, he might have been undecided about some or any of them until LSS convinced him of their merits. My reading of the overall body of evidence suggests either or both were possible, but the PCP shows that the parties were engaged in an advisory (then discretionary) based service. Therefore, this sort of scenario would be expected. X would have had the value of his significant experience to consider any such ideas, and he would have had free will to accept them – or to reject them, as illustrated in the examples above. This does not automatically equate to undue influence.

- For the above reasons, I do not accept that X was led unwillingly into the

Discretionary Trading agreement or that he did not understand the effect of the agreement (in terms of changing an advisory arrangement into a discretionary one). He had free will, so the former was unlikely to have been the case, and he had too much experience not to understand the effect of the change. As he has noted, I accepted in the PD that he continued an involvement in the trading account's activities despite this change. It appears to have been an approach both sides were prepared to apply, but it is also the case that LSS displayed conduct of a discretionary trading manager in the same context, so the change was nevertheless effective and apparent to X.

- I acknowledge his point about the solace he says he found in the knowledge that he could veto, in practice, components of the discretionary arrangement. Some of X's arguments are that he was not aligned with, or committed to, some of the terms in the arrangement. However, his consent to them in the agreement document conveys the opposite. Whilst the discretionary trading service was in place LSS was entitled to operate within its agreed terms, which, overall, it appears to have done. X was entitled to terminate the agreement if he later decided that he disagreed with the terms, but he did not do that until around March 2024. As I addressed in the PD, with regards to his January 2024 concerns, even where those concerns appear to have been enough to prompt him to terminate the arrangement he chose not to at the time. In these circumstances, it is difficult for him to show he was not committed to the arrangement – up to when he eventually terminated it.

- I have noted his point about LSS' email to him of 10 August 2023. The email includes – "*The firm's strategy (as agreed and part of your investment mandate) is 1) not to sell but to hold onto losing shares (and hopefully wait for them to recover while collecting dividends where possible) and 2) to sell 'winning' shares to bank a profit.*"

- However, I have also noted the following – this appears to have been a routine valuation reporting email; separately, the market commentary emails appear to have been the ones dedicated to reporting on strategy; in a market commentary email of 4 August 2023, the title was "*Short term trading and Market Volatility*" and its contents included "*Please be reminded that our investment strategy is generally one of short-term trading, which means a high frequency of transactions.*" and "*If you do not want to participate in short term trading, then simply reply to this email and we can adjust your strategy accordingly.*"; the other market commentary emails that followed conveyed messages broadly along the same line; for example, the email of 18 September 2023 was titled "*Short Term Strategy*" and included the notice "*If you do not wish to engage in higher frequency (short term) trading, please let us know.*"; I have not seen evidence that X responded to any of these emails to object, as the emails invited him to do, to the short term trading/HFT strategy they declared.

- In the above context, I am not persuaded that the 10 August 2023 email establishes the point X has cited it for.

With regards to the £1,600 charge, the PD said –

"*The £1,600 charge was deducted on 28 February 2024. As far as I understand it has not been refunded. LSS' argument on this is supported, in principle, by the terms agreed in the PCP (and schedule of charges), in the sense that if, after the end of the arrangement, it nevertheless conducted work in closing the relevant 16 existing trades then it was/is entitled to apply the minimum agreed exit transaction charge of £100 per trade, hence the £1,600 total.*

However, if in reality, after the end of the arrangement, LSS was not involved in the management and/or closure of the relevant 16 trades, perhaps because X dealt with them himself, then it has not performed any work to justify the £1,600 in charges and the deduction should be refunded. The same applies if the actual number of the relevant trades is below 16 and if they were closed by LSS, in which case there would be an overcharge for the difference (where no work was done to justify the charge), which should be refunded.

We do not appear to have enough evidence to clarify which of the aforementioned scenarios has happened, so I cannot make a definitive finding. For this reason, I ask both parties to provide their comments on and clarification of the matter in response to this PD. The possible outcomes are as summarised above, so depending on which scenario applies I may or may not make an award for a refund of fees (either the full £1,600 or any overpayment element within it) in my final decision."

X's evidence is that LSS closed only three of the 16 trades. As LSS does not appear to have submitted comments on the PD this is the only post-PD comment I have on the matter. On balance and in the absence of reason to conclude otherwise, I find that LSS was entitled to £300 in fees for the closure of three trades (£100 per trade closure), but it deducted £1,600 so it has received an overpayment of £1,300 in relation to the 13 trades that it appears to have had no role in closing.

I order LSS to refund the overpayment to X by paying him £1,300, plus interest on the £1,300 refund at the rate of 8% simple per year from the date(s) on which the payment was deducted and up to the date the refund is settled/paid to him. The interest payment is to compensate X for being deprived of the £1,300 from the date(s) of deduction to the date of settlement.

My final decision

For the reasons given in the PD and in this decision, I do not uphold X's complaint about breach of mandate and churning. However, the fee overpayment matter is distinct, and London Stone Securities Limited must refund X as ordered above.

Under the rules of the Financial Ombudsman Service, I'm required to ask X to accept or reject my decision before 13 April 2026.

Roy Kuku
Ombudsman