

The complaint

Mr and Mrs H complain about the advice they received from Capital Professional Limited, trading as Ascot Lloyd, referred to as “the business”.

In short, they say the business gave unsuitable advice to remain invested in the Woodford Equity Income Fund – referred to as “the fund” or “WEIF” – to which their bond was overly exposed to.

Mr and Mrs H say that they’ve suffered a substantial financial loss as a result of the unsuitable advice and would like compensation for their losses.

What happened

In October 2013, Mr and Mrs H invested £100,000 in a bond. In 2015, they invested a further £89,520 – of this sum around 65% of it was invested in WEIF, which it started in 2014.

Historically, the fund performed well for a number of years, yielding returns of up to 8.09% according to the business, until around mid-2017 when it started to underperform. By late 2018 returns had reduced to 2.17%.

In June 2019 the fund was suspended in an attempt to protect investors in the fund, following “*an increased level of redemptions that the fund was unable to meet*”.

The business didn’t uphold the complaint. In short, it said:

- It hadn’t done anything wrong.
- The adviser met Mrs H in her home in June 2018. Although it was a matter of record that she (and Mr H) had a large exposure to the fund, it was discussed and agreed that it had dropped in value slightly, but it would be a poor time to switch out the fund.
- In due course, the adviser met with Mr H in October 2019, when Mr H questioned why he (and Mrs H) hadn’t been taken out of the fund. But at that stage the fund had closed, and there was nothing it could do.
- Whilst it sympathised with the drop in value, based on the available information it was unable to uphold the complaint.

Mr and Mrs H disagreed with the business’s response and referred their complaint to our service.

One of our investigators considered the complaint and thought it should be upheld. In summary, he said:

- Based on the agreement Mr and Mrs H had with the business, it had a responsibility to regularly discuss their investment and assess its suitability.
- The fund, which launched in 2014 – the same year they switched to it – wasn’t as risky as it became in later years.
- The fund was (at the outset) broadly in line with their risk profile – namely a three out of seven – and it performed well.

- Given the above, he's unable to say that the initial advice – given by the predecessor business subsequently acquired by the business – to invest in the fund was unsuitable.
- Having reviewed the meeting notes with Mrs H from the June 2018 – he's been unable to find any mention of her/their exposure to the fund, or any consideration of switching out of it. The notes focus on Mrs H's financial future following her divorce from Mr H.
- The meeting notes show:
 - An attitude to risk assessment was conducted and found Mrs H as being a 'moderate' risk investor. However, she expressed she didn't want to take too much risk and had infinite time to make her money grow. She didn't want to risk losing it all.
 - On paper Mrs H had a high capacity for loss, but 'in reality' given her circumstances, it was moderate.
 - It was recorded "*she wants the money to grow relatively smoothly without taking too much risk and does not really want any shock drop in the value over the coming months and years.*"
- The bond was intended to be used to assist their children through university and after they graduate – a record from January 2016 supports this. Withdrawals previously made have also been used to pay for university accommodation. In the circumstances, it was unlikely that they wanted to take more risk.
- In April 2018, the fund was categorised by the Investment Association (IA) as a UK ALL Companies Fund rather than a UK Equity Income Fund, to reflect the lower income paid by the fund.
- Because of the fund risk, Mr and Mrs H's circumstances and Mrs H's attitude to risk – the high exposure to the fund at that time wasn't suitable. But there's no evidence that this or the fund was specifically discussed at the June 2018 meeting.
- Whilst the business wouldn't have known what was about to happen – so it wasn't unreasonable not to advise them to move out of the fund altogether – the business ought reasonably to have advised them to move half of their investment in the fund to a less risky investment.
- In other words, the business failed to provide suitable advice, so to put things right it should:
 - Compare the performance of Mr and Mrs H's investment - namely half of their holdings in WEIF as of June 2018 – with the 50/50 benchmark, and if there is a negative difference, pay them the loss.
 - Also, pay Mr and Mrs H £500 compensation for the distress and inconvenience caused.

The business disagreed with the investigator's view and asked for an ombudsman's decision. In summary, it said:

- It was important to note that Mr and Mrs H had just completed their divorce – they were in the process of dividing their assets and refused to meet together. Their main priority was to complete the 'divorce sharing order' and to arrange for these monies to be invested, as evidenced by the recommendation report for Mrs H.
- It would've been logical to suffer small losses rather than to make a 50% change on the fund. It would've been akin to a knee jerk reaction.
- The adviser confirmed that in a meeting with Mr H in June 2018 it discussed the fact that the fund had started to drop, however decided that it needed time to recover and not crystallise any losses. Therefore, they decided to do nothing and give it time to recover.
- There's nothing to say that Mr and Mrs H would've chosen to switch funds, even if it had been recommended. It's an unfortunate consequence of investing in the WEIF

and nothing that the business has done wrong.

The investigator having considered the additional points wasn't persuaded to change his mind. In summary, he said:

- In June 2018, the IA had already re-categorised the fund. So, by the time the meeting took place, the fund was riskier than it was at the outset.
- Despite what the business says, there's no evidence that the fund was specifically discussed at the meeting.

In response, the business said it can't provide additional documentation relating to the matter but wished to reconfirm its position. In short, it made the following key points:

- The fund has performed well until 2018.
- Whilst Mrs H may have reduced her capacity for loss, Mr H's capacity for loss hadn't been re-assessed and as this was a joint investment, no change in investment could be recommended in the circumstances.
- Mr H had declined to meet up and discuss the bond and this made things difficult.
- It can't agree that a change in capacity for loss – from high to medium – necessarily meant a reduction in the proportion of the portfolio held in the fund.
- In hindsight a recommendation could've been made, but the adviser believed the fund to be strong enough to bounce back.
- Given the circumstances at the time, the adviser was correct not to reduce the holding in WEIF by half.

As no agreement has been reached the matter has been passed to me for review.

What I've decided – and why

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

Having done so, I agree with the investigator's conclusion for much the same reasons. I'm going to uphold this complaint.

On the face of the evidence, and on balance, despite what the business says, I'm not persuaded that it behaved reasonably. In other words, on balance I'm not persuaded that the advice to remain fully invested in the WEIF – without any reduction in exposure to the fund – was reasonable in the circumstances.

Before I explain further why this is the case, I think it's important for me to note I very much recognise Mr and Mrs H's strength of feeling about this matter. They and the business have provided detailed submissions in respect of the complaint, which I've read and considered carefully. However, I hope they won't take the fact my findings focus on what I consider to be the central issues, and not in as much detail, as a discourtesy.

The purpose of my decision isn't to address every single point or question raised under a separate subject heading, it's not what I'm required to do in order to reach a decision in this case. I appreciate this can be frustrating, but it doesn't mean I'm not considering the pertinent points.

My role is to consider the evidence presented by Mr and Mrs H and the business and reach what I think is an independent, fair, and reasonable decision based on the facts of the case, rather than take any side.

I think Mr and Mrs H were willing to take a risk with their investment – in order to achieve their objective for growth – but given their change in circumstances, a reduction in capacity for loss for Mrs H, and reclassification of the fund, I think this rendered their continued 65% investment in the fund unsuitable. It's also questionable whether Mr and Mrs H understood the risks involved in light of the changes.

I note the business in its latest response accepts that 'in hindsight' a recommendation 'could have' been made but the adviser believed the fund to be strong enough to bounce back. I appreciate there was nothing concrete to suggest that the fund definitely wouldn't recover – I'm aware that it had in the past – but I'm not suggesting that the business is at fault for not being able to predict the future.

I also don't think it was unreasonable for the business not to advise Mr and Mrs H to completely disinvest in the fund – there was nothing to suggest the fund would be suspended – but that's not why I'm upholding this complaint. However, in the circumstances, and on balance, I don't think the advice to maintain the status quo was reasonable for them.

Despite what the business says, I'm not persuaded that its explanation justifies why Mr and Mrs H weren't advised to reduce their joint exposure to a single fund. In other words, I don't agree with the business's suggestion that in June 2018, doing nothing other than waiting and hoping for the best, was a suitable course of action for them – particularly given the change in circumstances, fund reclassification and the reasons for it.

I also don't agree with the business that it was simply a case of dealing with 'small losses' versus changing funds – the latter would not have been a 'knee jerk' reaction but a swift considered one in light of the changes mentioned above. It could be argued that a change in Mrs H's appetite for loss was likely to be mirrored in Mr H's, so it's not an excuse that only Mrs H was assessed and not Mr H.

I appreciate the business only met with Mrs H at the material time, but it probably could've done more to see Mr H, even if he didn't want to meet with Mrs H – I don't think he had to, in order to discuss the bond with the business, after their divorce.

I note the fund had undergone the reclassification in April 2018 - when the fund was reclassified as a UK ALL Companies Fund instead of the Equity Income Fund – which was a couple of months prior to the business' meeting with Mrs H in June 2018. Yet it remains a question mark whether the specific fund was discussed.

On balance, I think the business ought reasonably to have advised Mr and Mrs H to swiftly reduce their exposure to the fund – by 50%, which I believe is a fair amount – due to the shift from 'larger cap' exposure (generally companies with a market capitalisation of more than \$10 billion) within the fund, to 'smaller unquoted companies' (generally companies that have issued equity shares that aren't officially listed on a particular stock exchange). The fund was also probably more likely to be more volatile than the previous Equity Income funds, but these issues weren't addressed by the business.

On balance, I'm persuaded that the reclassification (more likely than not) represented a change to the original expectation Mr and Mrs H probably had for their investment in this fund, and therefore the adviser ought reasonably to have advised them to reduce their exposure to this, but failed to do so.

To put things right, I think the recommendation by the investigator is broadly fair and reasonable. It's in relation to 50% of Mr and Mrs H's holdings in WEIF, which I'm persuaded

ought to have been taken out and invested elsewhere with less risk – probably by late June 2018, hence the date of 29 June 2018.

I also think £500 compensation – which equates to £250 each for Mr and Mrs H – is broadly fair and reasonable given the distress and inconvenience suffered as a result of the unsuitable advice and uncertainty surrounding their investment.

Putting things right

Fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mr and Mrs H as close to the position they would probably now be in if they had not been given unsuitable advice.

I take the view that Mr and Mrs H would have invested differently. It is not possible to say precisely what they would have done differently. But I am satisfied that what I have set out below is fair and reasonable given Mr and Mrs H's circumstances and objectives in June 2018.

I think it's fair that any changes would have been made by the end of June 2018.

What must the business do?

To compensate Mr and Mrs H fairly, Capital Professional Limited trading as Ascot Lloyd must:

- Compare the performance of Mr and Mrs H's investment with that of the benchmark shown below and pay the difference between the fair value and the actual value of the investment. If the actual value is greater than the fair value, no compensation is payable.
- Pay to Mr and Mrs H £500 compensation for the distress and inconvenience caused by the business failing to provide suitable advice.
- Provide the details of the calculation to Mr and Mrs H in a clear, simple format.

Income tax may be payable on any interest awarded.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Half of the holdings in the Woodford LF Equity Income Fund	Still exists	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	29 June 2018	Date of settlement	Not applicable

Actual value

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

If at the end date the investment is illiquid (meaning it could not be readily sold on the open market), it may be difficult to work out what the actual value is. In such a case the actual value should be assumed to be zero. This is provided Mr and Mrs H agree to Capital Professional Limited trading as Ascot Lloyd taking ownership of the investment, if it wishes to. If it is not possible for Capital Professional Limited trading as Ascot Lloyd to take ownership, then the business may request an undertaking from Mr and Mrs H that they repay it any amount they may receive from the investment in future.

Fair value

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

To arrive at the fair value when using the fixed rate bonds as the benchmark, Capital Professional Limited trading as Ascot Lloyd should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Capital Professional Limited trading as Ascot Lloyd should apply those rates to the investment on an annually compounded basis.

Any withdrawal, income, or other payment out of the investments should be deducted from the fair value at the point it was actually paid so it ceases to accrue any return in the calculation from that point on.

If there are a large number of regular payments, to keep calculations simpler, I will accept if you total all those payments and deduct that figure at the end instead of deducting periodically.

Why is this remedy suitable?

I have chosen this method of compensation because:

- Mr and Mrs H wanted capital growth with a small risk to their capital.
- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to their capital.
- 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.
- I consider that Mr and Mrs H's risk profile was in between, in the sense that they were prepared to take a small level of risk to attain their investment objectives. So, the 50/50 combination would reasonably put Mr and Mrs H into that position. It does not mean that Mr and Mrs H would have invested 50% of their money in a fixed rate bond and 50% in some kind of index tracker fund. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr and Mrs H could have obtained from investments suited to their objective and risk attitude.

Further information

The information about the average rate can be found on the Bank of England's website by searching for 'quoted household interest rates' and then clicking on the related link to their database, or by entering this address www.bankofengland.co.uk/boeapps/database, clicking on: Interest & exchange rates data / Quoted household interest rates / Deposit rates - Fixed rate bonds / 1 year (IUMWTFA) and then exporting the source data.

There is guidance on how to carry out calculations available on our website, which can be found by following this link: <https://www.financial-ombudsman.org.uk/businesses/resolving-complaint/understanding-compensation-compensation-investment-complaints>. Alternatively just type 'compensation for investment complaints' into the search bar on our website: www.financial-ombudsman.org.uk. I'm upholding the complaint, but it's important to note there might not be redress due for financial loss depending on the outcome of the calculations I've asked the business to carry out.

My final decision

For the reasons set out above, I uphold the complaint.

My decision is that Capital Professional Limited trading as Ascot Lloyd should pay the amount calculated as set out above.

Capital Professional Limited trading as Ascot Lloyd should provide details of its calculation to Mr and Mrs H in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs H to accept or reject my decision before 9 January 2023.

Dara Islam
Ombudsman