DRN-4321406

The complaint

Mr H complains about the advice and service provided by London Stone Securities Limited, referred to as “LSS”.

In summary, he says:

- He’s unhappy about the financial losses incurred in his Self-Invested Personal Pension (“SIPP”), under the management of LSS.
- He says that as a result of unsuitable investment advice and high risk he’s suffered a loss of around £500,000.

To put things right, he’d like compensation for his losses.

What happened

LSS didn’t uphold the complaint. In summary, it said that the investment advice was suitable, and that Mr H’s SIPP was managed properly in line with his attitude to risk (ATR). It also said that some of the investments were made by him on an execution only basis, without any advice or guidance from it, therefore it isn’t responsible for any losses he may have sustained as a result of this.

One of our investigators considered the complaint but didn’t think it should be upheld. In summary, he said:

- Performance alone isn’t normally a ground for complaint because it isn’t something that LSS can predict or has control over. Many other factors are involved and there’s always an element of risk for which a business isn’t responsible.
- Under the Conduct of Business Sourcebook (COBS) – namely COBS 9.2 – LSS has fulfilled its obligations. It has considered Mr H’s circumstances, affordability, ATR, and capacity for loss. In other words, LSS has taken reasonable steps to ensure that its recommendation was suitable.
- Under the LSS advisory service, it offered advice on equities only, from the perspective of stock specific risk. This was made clear to Mr H in the account opening documentation.
- Mr H was given sufficient information to enable him to understand and appreciate the ‘equity advisory service’.
- Using the Private Client Profile (“PCP”) and the Client information Form (“CIF”) completed in 2018, as well as the PCPs competed thereafter during the course of his advisory relationship with the business, LSS determined that its advised service was suitable for Mr H.
- It also agreed that his ATR was medium and confirmed that shares within the FTSE 250 index was considered medium risk.
- Mr H confirmed that he was interested in FTSE100, FTSE250, FTSE Small Cap and AIM shares. LSS therefore offered Mr H recommendations covering all these shares but monitored his account to ensure that the overall allocation remained in line with his risk profile of medium.

- Overall, the recommended trades were in line with the agreed risk profile. The investigator has seen no evidence that it was unsuitable.
- Mr H was provided with enough documentation to make clear the nature of the service being received, and risk involved and why the recommendations were suitable.
- Despite Mr H's concerns about the short-term nature of his investment, the March 2018 CIF confirms that his preferred timeframes were short-term, medium-term, and long-term. This was further confirmed within the PCP, by Mr H selecting the same terms, in response to the question about how active he'd like the account to be. So, it was reasonable for LSS to recommend both short-term and long-term trading recommendations.

Mr H disagreed with the investigator's view and asked for an ombudsman's decision. There's been much correspondence between him and the investigator, but in summary, he made the following key points:

- His complaint is only about poor advice and risk management.
- He had no knowledge of the bond market or FTSE investments – other than FTSE 100, and he was fully reliant on LSS for providing appropriate advice.
- He was looking for capital protection and income.
- Two separate advisers have recently advised him that his portfolio had been mismanaged. So, he was hoping to get the complaint resolved before moving to another business, but he's concerned about what's left of his investment.
- LSS behaved against his wishes by continuing to trade/sell shares.
- LSS was aware of his intentions in 2018 to (possibly) semi retire in his mid-50s and use part of his SIPP to pay off his mortgage. In 2019 his circumstances changed, he found a new job – with better pay and prospects – and pushed back his plans.
- He refused to engage with 'compliance forms' because he disagreed with advice given.

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

- There's nothing within the PCP and CIF that shows that Mr H wanted capital protection. It was recorded that his objective was 'Capital Growth & Income', and that he wanted to invest 100% in shares in line with his ATR. He also confirmed that his maximum tolerance for loss was no more than 75%. This doesn't suggest that he was looking for capital protection.

Mr H provided the following additional information:

- Around 2018, when he transferred his SIPP and a small investment portfolio to LSS, he was in a low paid job.
- He was in his early 50's and was looking to retire in his mid-50's – he wasn't sure that he'd find similar employment.
- He had a small investment of about £20,000, and little other assets except for his house with an £80,000 mortgage. He had around £20,000 in savings. He didn't have £80,000 in cash as claimed by LSS. All forms were completed with LSS guidance.
- He went to LSS with the intention of investing 75% of his £800,000 – long-term generating growth. The rest he was looking to take a higher risk with, with a view to taking out a lump sum in his mid-50s and income depending on his employment circumstances.
- He had several meetings and made clear that he wanted to build a portfolio. Income was what he was interested in.

- LSS discussed building a diverse portfolio of shares spread across different sectors, but he only had experience of one financial sector.
- Whilst his plans changed and he didn't need to semi-retire as anticipated – in late 2020, he managed to secure a higher paid job – his requirement for the SIPP didn't change. It was still his primary vehicle for paying off his mortgage.
- In 2021, he took a small lump sum and started a limited drawdown which then stopped because "Hartley" closed. He's unsure of who his current SIPP administrators are.
- He's been relying on advice from LSS to build an appropriate SIPP portfolio. He's suggested certain transactions, but they haven't been listened to, and LSS has sold investments that he'd rather keep. Including going back to short term gain trading despite him expressing his reservations.
- As far as he's aware, fees have been paid to LSS for all transactions, not only in relation to execution only transactions. Part of his complaint is that LSS are incentivized to keep churning shares and that's why the SIPP hasn't built a long-term income based balanced portfolio.
- He's trying to transfer out but can't understand how LSS isn't responsible for "at least some of the incredibly poor performance" of the SIPP whist in its care.
- At least two different advisers have said that the investments were/are speculative.
- There have been many emails, but some he's found suggest that he was reliant on LSS's advice.

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 not going to uphold this complaint.

On the face of the evidence, and on balance, despite what Mr H says, I'm unable to safely say that the recommendation to invest in the SIPP was unsuitable because it didn't achieve better returns and/or that it represented a higher risk than Mr H was willing to take. I also can't safely say that the SIPP was mismanaged by LSS, I've seen no evidence that it was.

On the face of the evidence, and on balance, I'm satisfied that Mr H was prepared to take (at least) a medium level risk, in order to achieve potential returns and income. I note he was unhappy with the performance of his previous investments and wanted to invest in something with a medium level risk in order to achieve his objective using a short, medium, or long-term strategy.

Before I explain why this is the case, I think it's important for me to note I very much recognise Mr H's strength of feeling about this matter. He has provided detailed submissions to support the complaint, which I've read and considered carefully. However, I hope he 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 raised under a separate subject heading, it's not what I'm required to do in order to reach a decision in this case. In other words, I don't have to comment upon every single point made.

My role is to consider the evidence presented by Mr H and LSS, and reach what I think is an independent, fair, and reasonable decision based on the facts of the case. In the circumstances, I don't need any further evidence to make my decision.

I don't uphold this complaint, in summary, for the following reasons:

- I'm aware that this was a mixed advisory and execution only service, with an element of a discretionary service, which allowed LSS to make decisions on Mr H's behalf, in line with the agreed mandate.
- I note that the advisory service was only in relation to equities, and not decisions that Mr H made himself even though matters may have been discussed with LSS. The decision was ultimately Mr H's. This might explain why he thought LSS was responsible for decisions made by him.
- I note that Mr H made a £200,000 investment into Audley Funding Plc, which sadly didn't do as well as he'd hoped. However, this was an execution only purchase, so LSS didn't offer any advice in relation to this transaction (due to the unregulated nature of it). It's more likely than not that Mr H did his own research and was attracted by the higher yield and was prepared to accept a higher default risk.
- Based on what LSS says I'm satisfied that it made clear that it could facilitate the transaction but not offer any advice. I note that the fund suffered a big loss. However, in the circumstances I can't blame LSS for the poor performance and/or subsequent administration of the fund.
- I note there were other losses that occurred across a large number of companies, but I'm satisfied that Mr H was aware, for example, that some of the FTSE 250 companies would fail. But given the many (external) reasons for this, I don't think LSS are responsible for losses arising from this.
- Despite what Mr H now says, I note he accepts that in 2018 he had a medium ATR and that he was looking to invest the majority of his funds (from another investment) into an investment generating income and growth, after taking early retirement in or around 2020. I also note that he was planning to invest around 25% of the overall funds in high-risk investments, in order to achieve his objective. On the face of the evidence and on balance, I'm satisfied that LSS's recommendation met his objective.
- Put a different way, on balance, I'm satisfied that Mr H's portfolio was diverse, with his main investment being made up mainly of the blue-chip stocks providing capital growth and dividends, the Audley bond – which was an execution only investment – and the AIM investments providing capital growth. The latter was a small investment based on what Mr H wanted to do and advised on by LSS, as per his request.
- On balance, I'm satisfied that Mr H agreed with LSS to invest in blue-chip shares dealing in FTSE100 and FTSE250 companies. Despite what he says, I can't safely say that these were high risk stocks.
- I note he confirmed that he had 10 year's worth of experience in share dealing and that he had a good level of knowledge in the stock market. I'm persuaded that this enabled him to understand the risks associated with investing in the stock market.
- In terms of risk, I'm aware that LSS categorise FTSE100 as low risk and FTSE250 stocks as medium risk, and based on what LSS says, 90% of the trades fell into these two categories which is why the overall risk rating for Mr H's portfolio has been categorised as 'medium' risk.
- Despite what he now says, I'm not persuaded that he's risk averse or that he was looking for a capital guaranteed product – evidently the services provided by LSS wasn't based on this premise. This point goes against the very basis of his complaint and medium risk ATR which he also seems to agree with.
- I am also aware that losses didn't occur overnight but over some time and Mr H would've been notified every time the value of his investment went down by 10%. Some of the correspondence between him and LSS show that he was aware and

concerned but evidently not concerned enough to take his money out.

- I appreciate what Mr H says about his circumstances principally in terms of his employment, a year or so after he initially invested. But that doesn't of itself necessarily mean that the 2018 advice was unsuitable. I've also seen no evidence that he wanted to do anything differently, and in fact he maintains that notwithstanding changes to his circumstances, the investment objective regarding the SIPP remained the same. So, I can't say that LSS ought to have done things differently or that it has done anything wrong by not doing so.
- I note Mr H accepts that he was willing to take a medium risk – with a smaller element of higher risk – over the short term when he was looking to semi-retire – his objective was capital growth and income – and it's arguable that this was necessary for him to achieve his objectives, even though his job wasn't well paid, and he wasn't sure if he'd gain other employment.
- It's arguable that he was in an even better position later on to take a medium level risk (with some higher risk) given his employment status had improved, so he was better able to replace losses.
- I note an opposing argument might be that he didn't need to take this level of risk – because he would continue to work and pay his mortgage – but I've seen nothing to suggest that Mr H was unhappy to do so.
- I note what Mr H says about expressing his reservations about short term (small gain) trading but I'm unable to say that this was unreasonable given his objectives and the fact that his position regarding the SIPP didn't change despite some of his plans changing.
- I note that Mr H at the outset agreed to a short, medium- and long-term investment strategy in order to achieve his objective. So, LSS had some latitude in terms of how it advised Mr H.
- I note in his initial complaint to LSS he said that he was reliant on LSS to provide investment advice for a SIPP that had a short-term investment lifespan. I also note in the PCP he stated that he was happy to trade short term – as well as medium and long-term – namely to buy and sell over days, weeks, and months. So, I can't say that LSS has done anything wrong by applying this strategy.
- Despite that, I'm satisfied that the transactions were carried out in good faith with Mr H's authority, as the account was managed on a mixed advisory, execution only and discretionary basis. Despite what Mr H says, I note that there were some companies that he refused and others that he agreed to – it is therefore arguable that both he and LSS, managed the investment reasonably 'hands on' as suggested by LSS.
- I note Mr H didn't always take LSS's advice, and he wasn't obliged to if he didn't feel it met with his objective. This suggests that he wasn't made to do something that he didn't want to or was unhappy with.
- The above notwithstanding, I note that the strategy (agreed with Mr H) was one where profitable shares would be sold and losing shares would be held and kept for their dividends. Despite what Mr H says, I note that according to LSS the biggest losses to the account was not because of shares that were sold, but because of the shares that weren't sold. So, this goes against Mr H's arguments that LSS should've held more to prevent further losses.
- I agree with LSS that without the benefit of hindsight, it's impossible to know which shares should've been sold and which should've been kept. Nevertheless, I'm satisfied that LSS acted within its authority and in an effort to do what was in Mr H's best interest.
- I note that the approach might not have always worked out for the better, but this isn't something I can blame LSS for. Without the benefit of hindsight, it's difficult to know which trade was guaranteed to succeed.
    - The discretionary element allowed and still does allow LSS to make some trades, some sales for example in anticipation of the share values dropping

    but this doesn't of course mean that it will.
  - I'm also aware that LSS says that its being going into cash to reduce the market drop, in other words, trying to protect Mr H's position. I'm aware that holding stock that is dropping can exacerbate the loss.
- Given the risks in the stock market, I can't say that any strategy was fool proof, and no guarantees were given. Mr H will be aware of this and I'm mindful that his tolerance for loss was no more than 75%.
- Despite what Mr H says about LSS being incentivized by the charges, I'm unable to safely say that this was the case – a business is entitled to charge for its services. I don't think Mr H expects LSS to provide a free service.
- If LSS had been churning I would expect it to sell stocks as they fall as this is likely to generate more commission rather than holding.

I appreciate that Mr H will be thoroughly unhappy that I've reached the same conclusion as the investigator. Furthermore, I realise my decision isn't what he wants to hear. Whilst I appreciate his frustration, I can't safely say that LSS gave unsuitable investment advice or behaved in such a way that this complaint should be upheld.

In other words, on the face of the available evidence, and on balance, I can't uphold this complaint and give Mr H what he wants.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 4 April 2024.

Dara Islam
Ombudsman