DRN-4630487

Financial Ombudsman Service

**The complaint**

Mr and Mrs D complain that they were given unsuitable investment advice by Ascot Lloyd Financial Services, which is the trading name of Capital Professional Limited, referred to as *"Ascot"*.

In summary, they say:

- In June 2021, they were incorrectly advised to invest their entire wealth into three funds which was unsuitable.
- In November 2021, after raising concerns, they were advised not to make any changes to their portfolio. In January 2022, unhappy with the advice and having lost faith, they terminated their relationship with Ascot.

To put things right, they'd like compensation for financial loss with interest, as well as compensation for distress and inconvenience.

**What happened**

Ascot didn't uphold the complaint. In summary it said that the advice was suitable and met Mr and Mrs D's objective for income and growth. It also said that they weren't advised to take more risk than they were content with taking – namely a greater risk than they had previously taken in order to achieve a greater potential for growth.

The three funds that they were invested in had a suitable asset mix – providing a diverse spread of investments into equites/bonds and a fund of funds approach that demonstrated a spread of investments across different countries and different sectors – which were in line with their (high medium) attitude to risk. Each fund subscribed to the same risk mapping used by Ascot and each fund mapped to a level of risk which was in line with their ATR and capacity for loss.

Despite being advised to invest equally in each of the three funds, Mr and Mrs D chose to invest 50% in one fund – and 25% in each of the remaining two funds. Ascot also maintained that there was no evidence that Mr and Mrs D were induced into investing into three funds only. The discussions regarding allocation suggested that they were aware of the fund choices and were happy to follow the advice rather than choose to do anything different.

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

- Under Conduct of Business Sourcebook (COBS) – namely COBS 9.2 – Ascot has fulfilled its obligations.
- Despite what Mr and Mrs D say, the advice to invest in the three funds – which is what this complaint is primarily about – represented sufficient diversification.
- Having taken into account income, expenditure, assets, and liabilities, the advice to invest in the three funds was suitable.
- It was recorded in the annual review and investment and retirement planning report dated 3 June 2021 that Mr and Mrs D could endure a medium level loss in terms of

their capacity for loss, so they could tolerate losses in their portfolio. In addition, they had £50,000 in cash deposits of which £5,000 was considered as an emergency.

- It was recorded that they had a 'high-medium' risk profile which showed that they prefer (mainly) higher risk investments – such as shares – along with the inclusion of some lower to medium risk investments – such as cash, bonds, and property. It was also recorded that they were unhappy with their previous investment.
- The recommendation to switch funds met their objective for growth in a tax efficient way whilst allowing them to receive sufficient income. In other words, the recommendation was in line with Mr and Mrs D's stated objectives.
    - Mr D wanted to keep nine months of income held in cash within his pension – Ascot would then sell down the funds within the pension on a three-monthly basis – to replenish cash required for the income withdrawals.
    - The recommendation also resulted in cost reduction of 0.74% - or approximately £8,440 – helping to reduce the charges thereby improving the potential for return.
- The three funds that Mr and Mrs D were advised to invest in represented sufficient diversification. They were as follows:
    - The Baillie Gifford Managed Fund:
        - 40-85% of the funds are invested in global equities, with the remaining balance allocated to cash and bonds.
        - There's no direct property exposure.
        - As of 30 April 2022, its top five holdings include the US Treasury bonds, Tesla, The Trade Desk, BHP Group and Diageo.
    - The Liontrust SF managed Fund 6:
        - Same sector as the Baillie Gifford Managed Fund.
        - 40-85% of the fund are invested in global equities, however underlying allocations are dissimilar.
        - As of 30 April 2022:
            - The fund has a real estate or property exposure of approximately 3.7%, and total number of holdings at 161.
            - Its top five holdings include Liontrust GF SF Global Growth, Aphabet, Visa, Thermo Fisher Scientific and Iqvia Holdings.
    - The IFSL Avellemy Fund 6:
        - Different from the above two funds in that it's a 'fund of funds'. Instead of holding direct equities and bonds, it holds other funds from fund managers including Blackrock, Royal London, IFSL, and Jupiter.
        - As of 30 April 2022, it held 21 funds within it.
- The fund holdings were widely diversified and offered diversification across different investment management styles.
- The correspondence between Mr D and the adviser – between November 2021 to February 2022 – shows that Mr and Mrs D had queried the possibility of switching out of the Avellemy fund and into two lower cost tracker funds by Fidelity and Vanguard. But when asked (on 30 November 2021) to confirm his instructions, he responded by seeking clarification regarding the cost savings on his SIPP and ISA respectively. The adviser then advised against making changes due to the (initial) long-term investment approach recommended.
    - It was disclosed in the risk warnings and important considerations section of the investment report that the recommendations should be viewed as medium to long term investments and shouldn't be entered if the investor envisages withdrawing before this stage. So, in the circumstances, the adviser's approach wasn't unreasonable.
- On 8 February 2022, the adviser advised that should Mr and Mrs D wish switch back to their old strategy they should do so once the markets have recovered to prevent crystalising losses.

- Despite the concerns raised about 'discounting' the Baillie Gifford Managed fund with the new provider, according to the information available (in the form of a research note on its website) the fund remains available and on its wealth shortlist selected by its analysts who believe the fund has potential to outperform its peers over the long term.
    - Although the fund underperformed in 2022, it retained a ranking of 10th of the 148 funds for its performance over five years as of 30 April 2022.
    - The fund has a growth style bias and therefore it's reasonable to expect that this fund will perform well when the stock market rises but lag in performance when the markets fall. This was all disclosed to Mr and Mrs D.

- In 2022, the global markets performed poorly and weren't limited to Mr and Mrs D's three funds. In any event, they were never given any guarantees as to what they might get back by way of returns.

Mr and Mrs D disagreed with the investigator's view and asked for an ombudsman's decision. Mr D provided further information including in the form of articles – including a 2001 American academic article titled *"Should investors Avoid All Actively Managed Mutual Funds? A Study in Bayesian Performance Evaluation",* and another article on how AI has outperformed funds run by 'professional stock pickers'. In summary, he made the following key points:

- They were advised that switching investments would be considerably better. The adviser didn't take into account their previous investment – with the drawdown and ISA investment – was yielding regular and reliable income over a period of six years whilst preserving capital.
- They don't agree that the current funds represent diversification. Previously their investments covered 43 different companies across all asset classes whereas the funds boiled down to three share prices.
- The change to the original allocation of funds was based upon cost and the fact that there were no alternatives put forward regarding Avellemy there was potential for a conflict of interest being an Ascot company.
- Following their concern about diversification Mr D proposed that the tracker from Vanguard should be purchased. The adviser eventually agreed but suggested some time later that it would take six to eight weeks to complete – because the adviser had taken on too much work.
- He expressed concerns about the new provider discounting the Baillie Gifford fund – he was paying .45 and the new adviser was offering it at .24 – but was told by the adviser that this was illegal. But there might be other reasons why the adviser didn't want to discuss this.
- The February 2022 advice is disingenuous, as they'd already communicated that they no longer wished to pursue a business relationship with the adviser.
- They're aware that future performance isn't guaranteed, and that past performance isn't indicative of future returns. Their complaint isn't about performance but about the advice to invest into only three allocations.

The investigator having considered the additional points wasn't persuaded to change his mind. He's satisfied that he considered the pertinent points including the overall suitability.

He doesn't agree that this view was heavily weighted on the risk factors of the three funds. 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 substantially 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 and Mrs D say, I’m unable to safely say that the recommendation to invest in three funds was unsuitable because they didn’t achieve better returns and/or didn’t represent diversification.

On the face of the evidence, and on balance, I’m satisfied that Mr and Mrs D were prepared to take a greater risk – than they had done with their previous investments – in order to achieve potential for greater returns and income. I note they were unhappy with the performance of their previous investments and wanted to invest in something with a greater risk in order to achieve their objective.

Before I explain why this is the case, I think it’s important for me to note I very much recognise Mr and Mrs D’s strength of feeling about this matter. Mr D has provided detailed submissions to support 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 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 and Mrs D and Ascot, 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:

- Despite what Mr and Mrs D now say about their previous investments, I note the June 2021 report recorded that they were unhappy with their returns achieved from their investments with EFG Harris Allday, which led to their interest in switching to a managed growth investment strategy for the potential to achieve higher growth in their portfolio to meet their required growth/income needs – rather than relying more on dividend and/or interest yield generated. I can’t say that the advice to invest in the three funds on this basis was unsuitable.
- I note they were assessed to be high medium risk investors, and that there’s no evidence to suggest that this was incorrect. It’s arguable that greater risk was needed in order to try and achieve their objective for growth and that’s what Ascot advised. There would be little point in advising Mr and Mrs D to switch to new funds that were the same as their last. I don’t think it would assist with their dissatisfaction they felt towards their previous investments and their wish to do something different.
- Based on the above, under the relevant sections of COBS, I’m satisfied that Ascot took reasonable steps to ensure it fulfilled its obligations. Under COBS 9.2.1 and 9.2.2. I’m satisfied the recommendation was suitable for Mr and Mrs D and that Ascot took reasonable steps to ensure that it obtained the necessary information regarding their knowledge, experience, and investment objective. In the circumstances, I’m not persuaded that the recommendation was made without reasonably considering their circumstances and objectives.
- In the circumstances, I’ve seen nothing to suggest that the recommendation to invest in the three funds didn’t meet their objective for growing their personal investments in

a tax efficient way and to receive an income. I note that it even came with a cost saving for one of the funds, which probably explains why they invested more in it.

- Despite what Mr and Mrs D say, I'm unable to safely say that the recommendation to invest in the three funds – invested equally – didn't provide diversification of their investments. I make this finding given the different makeup, asset allocation and holdings of the funds which are set out in the background of this decision, which I don't need to repeat. Despite what Mr and Mrs D say, given the asset allocation I don't accept that this simply boils down to three share prices.
- I agree with the investigator that the holdings are widely diversified and offer diversification across different investment management styles. I've seen nothing to suggest that it wasn't suitable for a high medium risk investor. Despite Mr and Mrs D say, I'm persuaded that they were content to follow the recommendation at the time despite what they now say.
- I note that Mr and Mrs D decided of their own volition to invest more in one fund – namely 50% of their investment in the Baillie Gifford Managed Fund, given the cost savings and potential for returns. Based on the available information I can't say that this wasn't a prudent move by them, although there was no guarantee given and it's unlikely that without the benefit of hindsight the adviser would've known how the funds would perform.
- I'm also not persuaded that Ascot did anything wrong by advising Mr and Mrs D to do nothing in November 2021. Given their circumstances – their ATR, affordability, capacity for loss and medium to long term objective – I'm persuaded that advising them to stay put was a reasonable course of action – although I note they were given the option to confirm their instructions if they wanted to move and they didn't. If they had done so, there was no reason why Zurich wouldn't have done what it was asked to do.
- I note in February 2022, Mr and Mrs D were advised that if they still wished to go back to their old investment style they could do so, but ought to wait until the markets recovered so as not to crystalise any losses. I don't think this was bad advice even though the Mr and Mrs D might've communicated that they no longer wished to work with Ascot.
- I note that none of these plans or alternative plans were followed up despite Mr and Mrs D having the opportunity to do so and this isn't something I can blame Ascot for.
- I'm aware that there was no suggestion that the markets wouldn't improve, or that they had to act there and then given their medium to long term objective. I'm mindful of the warning that if Mr and Mrs D needed their money sooner perhaps this wasn't for them, so I'm not surprised that they were advised to stick with the medium to long term investment horizon.
- Just because Ascot didn't advise them to move their investment (after they complained) doesn't mean it wasn't managing their investment correctly or doing what it was paid to do. In other words, there was no obligation on Ascot to (automatically) advise them to move/surrender their investments if there was no reason to.
- Notwithstanding the academic debate surrounding fund managers and whether or not they're of value based on a mathematical formula, I'm not persuaded that the recommendation to invest in the three funds was unsuitable given Mr and Mrs D's circumstances, aims and objectives.
- The point of this decision isn't to agree or disagree with the articles provided or to provide a critical analysis of it. That's not something I need to do in order to reach a decision on this case.

I appreciate that Mr and Mrs D will be thoroughly unhappy that I've reached the same conclusion as the investigator. Furthermore, I realise my decision isn't what they want to hear. Whilst I appreciate their frustration, I can’t safely say that Ascot 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 and Mrs D what they want.

## 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 D and Mrs D to accept or reject my decision before 20 March 2024.

Dara Islam
**Ombudsman**