DRN-5124876

The complaint

Mr A has complained about the advice provided to him by London Stone Securities Limited ('LSS') with regard to the investments held within his pension. Mr A has stated that these investments were unsuitable, too high risk, and have caused financial loss.

Mr A's wife (Mrs A) has made a similar complaint about similar advice she also received from LSS. Whilst these complaints have been assessed individually, there will inevitably be similarities in my decisions in these cases given the parallel nature of the advice / complaints.

What happened

Mr and Mrs A started the process of moving their pensions in 2017, with Mr A having authority over Mrs A's account.

Mr A signed LSS's SIPP trading account application form in September 2017.

In October 2017 Mr A completed the transfer forms to move his Best Invest pension and his St James Place pensions to AJ Bell. From there the funds could be invested in line with recommendations from LSS.

Mr A completed LSS's private client profile ('PCP') on 13 December 2017.

This recorded Mr A circumstances and objectives at that time and confirmed that Mr A:

- Had experience of investment funds (held for between 3-10 years) but had never held any other type of equity investment.
- Considered his knowledge of the stock market to be good.
- Wanted to target capital growth.
- Wanted to consider investments in individual shares (noted as being medium risk).
- Recorded that Mr A would like to invest in the FTSE 100 (low risk), FTSE 250 (medium risk), FTSE Small Cap (med/high risk), and AIM (high risk).
- With regard to volatility Mr A confirmed he did not want to invest in highly volatile shares.
- Fees were documented as being 1% of the deal size, subject to a minimum of £100 per trade, with the sale of an advisory purchase also costing £100.
- Mr A was recorded as being aged 50, in good health, married with one dependant, and employed as a builder labourer.
- Mr A had £224,000 in his SIPP and £12,000 in NS&I savings.
- The family home was noted as being valued at £500,000 with a £320,000 mortgage in place.

The form was additionally completed confirming that Mr A had done extra research to ensure the chosen products were suitable (given he had never invested in them before).

On 21 December 2017 Mr A signed as LSS “risk disclaimer”. This confirmed that Mr A did not want to receive risk warnings whenever he agreed to a trade and that he understood the general risks of the stock market.

Also, on 21 December 2017 Mr A signed LSS’s “Investing in AIM shares” disclaimer which confirmed that he had agreed to invest in a number of AIM shares as part of a larger investment portfolio, that he understood the risks of AIM and penny shares, that he was aware these were high risk – high reward, and that these investments may sit outside of his original PCP.

On 3 January 2018 Mr A completed LSS’s Client information form (‘CIF’).

Mr A completed the tick box to confirm he wanted to invest and understood the risks of the stock market, that he was happy to consider short, medium, and long-term investments, that he wished to trade in the low, medium, and high-risk areas (detailed in the PCP above), that he wanted an advisory account, and that he had income of £35,000 a year.

On 9 January 2018 LSS emailed Mr A to confirm that his account should be regularly accessed and monitored. Copies of the LSS terms and conditions, the PCP document, risk warning document and AIM disclaimer were all attached.

The initial investments recommended were five investment trusts with an amount of £20,000 to be placed into each. These were:

- Fidelity China Special Situations.
- Baillie Gifford Shin Nippon.
- Vietnam Enterprise Investments.
- Scottish Mortgage Investment Trust.
- TR European Growth Trust.

Further equity investments into individual companies were made during February – May 2018.

On 3 May 2018 Mr A signed a high-net-worth investor statement confirming he had income of over £100,000 a year or investable assets of over £250,000. This was completed so Mr A could receive promotional communications on non-mainstream pooled investments.

Following this, later in May 2018, Mr A invested £35,000 into an Audley Bond, this was completed on an execution only basis.

Each time LSS recommended an investment to Mr A, an email would be sent with Mr A having to accept buy / sell recommendations before any action was taken.

In January 2019 LSS emailed Mr A to confirm whether his investment objectives, appetite for risk, and general financial circumstances had changed since the original assessment. Mr A confirmed nothing had changed.

A new investment strategy was agreed on 7 August 2019. This was to:

To rebuild the new portfolio along the following lines (approximate deal size only)

a. *AIM Strategy (£20k with £500 positions, 40 companies in total, total consideration £24k) – high risk/speculative shares in small companies.*
b. *b. FTSE 250 - £8k positions.*
c. *c. FTSE 100 - £10k positions.*
d. *d. International Investment Trusts - £10k*

[Mrs A's] *portfolio will be as follows (approximate deal size only)*

a. *AIM Strategy (£10k with £500 positions, 20 companies in total, total consideration £12k) – high risk/speculative shares in small companies.*
b. *b. FTSE 250 - £7k positions.*
c. *c. FTSE 100 - £8k positions.*

On 7 August 2019 Mr A signed a 'AIM shares and suitability document' which outlined a new approach to be taken. This explained £20,000 would be invested in 40 different AIM shares (£500 each). Fees of around £105 for each trade would be payable. The document noted that the bought shares would be held for around three years and stated that the shares should be considered largely illiquid.

With regard to risk, it was also detailed that Mr A had been made aware some of the AIM shares would lose money, in fact it may be the case that the majority lost money, however, overall, the possibility of a small number of large gains which outweighed the losses was attractive.

Fees were also covered in the document, with the initial commissions being confirmed as £100 per trade (20%). Reduced commission could be paid if fewer stocks were chosen however 20 had been agreed as this allowed the investment to be spread over several companies to mitigate the risk associated with any one stock. If sale commission was also taken into account, then it was explained that any individual stock would need to increase by 40% to break even.

The existing investments were encashed with new investments broadly in line with the suggested portfolio subsequently made.

At about the time the overall investment strategy was changed, Mr and Mrs A's accounts were moved from an advisory service to a discretionary service.

Mr A completed another high-net-worth self-certification document in November 2019.

The majority of the £500 AIM share investments were sold in December 2019.

LSS continued to manage the underlying investments until September 2023, at which point all the underlying investments were sold, an amount of around £81,000 was transferred away, with only the Audley Bond remaining within Mr A's SIPP.

Mr and Mrs A registered their complaint with LSS on 15 August 2023.

LSS rejected the complaint stating that the investments made were in line with Mr and Mrs A's ATR, additionally stating that the point of advice documentation adequately explained the levels of risk which would be attached to the recommended investments.

Unhappy with LSS's response to the complaint Mr A referred his complaint to this service in October 2023.

Our investigator looked into things and upheld both Mr and Mrs A's complaints. Our investigator did not believe LSS had met its regulatory obligations to ensure its recommendations were suitable for Mr and Mrs A. The investigator concluded that the investments recommended by LSS were too high risk and as such were unsuitable.

Additionally, with regard to Mr A's purchase of the Audley bond the investigator said that LSS had been involved in the arranging of this investment and that given the level of risk involved in the investment, and given Mr A's investment experience, it was unsuitable.

LSS did not agree and stated that the levels of risk Mr and Mrs A were exposed to was clearly laid out in the PCP and CIF documents, that our investigator had not correctly assessed the levels of risk associated with investment recommended by LSS, that the portfolios were low to medium risk, and that the overall strategies were in line with their ages and term to retirement.

LSS also noted that Mr A had given a video testimonial in support of LSS's services and said that Mr A should not be absolved of all responsibility given he had agreed to each investment recommendation made.

Our investigator was not minded to change their opinion and as such the case was passed to me for a final decision.

I originally issued a provisional decision in which I said:

"Firstly, the documentation on file shows that no regulated financial advice was received by Mr or Mrs A in relation to the transfer of their pensions to LSS. As such this decision is focussed solely on the suitability of the investments recommended by LSS and has not considered whether Mr and Mrs A's pensions should have remained with their previous providers.

LSS provided Mr and Mrs A with an advisory service and as such LSS had an obligation to ensure that their recommendations were suitable. The rules LSS were required to follow are laid out in the FCA handbook – specifically COBS 9.

Our investigator has already provided the relevant content and as such I will not include full excerpts of COBS 9 here, however, broadly, a business must obtain the necessary information regarding the consumer's knowledge and experience in the investment field relevant to the advice, their financial situation, and their investment objectives.

The PCP and CIF documentation states that Mr and Mrs A were prepared to take a medium level of risk with their investments.

Within the findings issued our investigator said that the recommended investments did not match the agreed medium risk approach and that Mr and Mrs A did not have the required capacity for loss to make such investments.

LSS have stated that the PCP and CIF documents made clear the risk levels they had allocated to each investment type (FTSE 100 - low risk, FTSE 250 - medium risk, FTSE Small Cap - med/high risk, and AIM - high risk), that Mr and Mrs A had agreed to proceed on that basis, and that the recommended investments were in line with what had been agreed.

Overall, I have reached broadly the same conclusions as our investigator and for broadly the same reasons.

It falls outside of the scope of this decision to look at each individual recommendation made and assess the level of risk each posed to Mr / Mrs A. However, I have looked at the investments recommended / made by LSS, both initially and after the change of approach in 2019, and agree with our investigator that these, overall and in combination, represented too high a risk for Mr and Mrs A.

The investment trusts initially recommended sought returns based almost entirely on overseas equities and would not generally be considered low or medium risk.

Subsequent investments, predominantly into individual equites are also considered unsuitable. I have explained why I have reached this conclusion below.

The documentation on file confirms that Mr A did have some experience of investing, but that this was limited to experience of investment funds. These are materially different to holding individual company shares.

The documentation on file also indicates that LSS consider investment funds (investment trusts, units trusts, ETFs etc) to be low risk. As such, the paperwork issued to Mr A suggests the holding of an investment fund to be of commensurate risk to the holding of an individual company share (as long as that company share is part pf the FTSE 100 index).

Investment funds, the only investment Mr A had experience of, can expose an investor to varying degrees of risk, dependent on the composition of the fund and the mandate given to the fund manager. Funds can target returns based on government / corporate bonds, property, equities in established markets, emerging markets, specific sectors of the economy etc. Each of these will behave differently and expose the investor to different degrees of risk and volatility. Additionally, each of these should be considered materially different to a direct shareholding of a single company – even if it is a FTSE 100 company.

For example, whilst FTSE 100 companies are the largest registered in the UK, with many being long-standing well-established companies, there remains the possibility that any of these companies could suffer severe financial difficulty with the ultimate result being a total loss for the shareholders – as happened to Mr and Mrs A here.

Whilst I accept the documentation indicates LSS consider FTSE 100 equities low risk, and that Mr and Mrs A signed this documentation, I do not believe this is sufficient.

LSS had a duty to ensure its recommendations were suitable based on Mr and Mrs A's circumstances, objectives, and experience. I have concluded that further explanation and comparison should have been provided to Mr and Mrs A about the differences between the proposed new investments and their ceding investments, to highlight how LSS's definitions of risk may have differed to that which they had experienced before.

Whilst I note that the initial documentation stated Mr A had conducted further research to ensure the chosen products were suitable, no further detail is provided and as such I do not consider this statement enough to conclude that Mr and Mrs A had (or had acquired) the necessary investment knowledge and experience.

Further, and again in line with what our investigator said, I do not believe sufficient consideration was given to Mr and Mrs A's capacity for loss.

LSS have stated that Mr and Mrs A were still working and had a number of years until retirement, however these facts alone are not all that needs to be considered. As far as the documentation available shows, LSS were taking responsibility for the entirety of Mr and Mrs A's retirement provision. As such, whilst Mr and Mrs A did not need access to their funds (in fact pension legislation meant they could not access their funds until at least age 55) further information was needed in order to properly assess their capacity for loss.

Information such as whether any other pension provision was in fact in place and whether Mr and Mrs A had disposable income with which to make further pension contributions could have been sought to establish whether investment losses which may arise from LSS's recommendations could be tolerated by Mr and Mrs A, or whether losses would have a lasting negative impact on their retirement with no other means of support.

I have carefully considered LSS's point that each investment recommendation was put to Mr and Mrs A in writing, with agreement sought before each trade was made. However, the fact that Mr and Mrs A were given the option to agree / disagree to each recommendation made does not remove the obligation on LSS to ensure each recommendation was suitable in the first instance.

Having concluded that the investments recommended by LSS were unsuitable I have gone on to consider the sale of the Audley Bond separately.

I have firstly considered Mr A was only marketed the bond after completing a high net worth investor statement. Mr A had completed LSS's PCP and CIF documents only a few months prior with these documents showing that whilst Mr A did have investable assets of close to £250,000 (made up almost entirely of his pension monies), his assets were below this level. In addition, Mr A's income was significantly lower than the £100,000 threshold noted on the form.

Whilst it may have been the case that Mr A's assets had increased over the time since the LSS documentation was completed, or that Mr A may not have disclosed all his savings / investments, this is not certain.

LSS have stated that the Audley Bond was arranged on an execution only basis and as such they are not responsible for any losses which may have been incurred on this investment. In relation to this I have considered the relevant regulations.

When looking at whether a firm has been involved in the regulated activity of 'arranging deals in investments', I've the FCA regulation contained in the Perimeter Guidance Manual (PERG) into account.

This states:

"The activity of arranging (bringing about) deals in investments is aimed at arrangements that would have the direct effect that a particular transaction is concluded (that is, arrangements that bring it about). The activity of making arrangements with a view to transactions in investments is concerned with arrangements of an ongoing nature whose purpose is to facilitate the entering into transactions by other parties. This activity has a potentially broad scope and typically applies in one or two scenarios. These are where a person provides arrangements of some kind:

(1) To enable or assist investors to deal with or through a particular firm (such as the arrangements made by introducers); or

(2) To facilitate the entering into transactions directly by the parties (such as multilateral trading facilities of any kind other than those excluded under article 25 (3) of the Regulated Activities Order, exchanges, clearing houses, and service companies (for example, persons who provide communication facilities for the routing of orders or the negotiation of transactions))."

PERG 8.32 states that, in the FCA's view, 'a person brings about or would bring about a transaction only if his involvement in the chain of events leading to the transaction is of enough important that without that involvement it would not take place'.

In this case, it's clear that the transaction was brought about – so I've focused on Article 25(1) and whether LSS's actions amounted to arranging.

Having reviewed the evidence, I have decided that LSS were key in Mr A investing in the Audley bond. I believe that were it not for LSS, Mr A would never have made the investment.

Mr A and LSS disagree on the way in which the bond was sold, with Mr A stating that this was on the advice of LSS. I was not present at any of the meeting between LSS and Mr A so I cannot say for certain what was (or was not said) and there is no documentary evidence of actual advice being provided regarding the bond. However, I'm satisfied that LSS was clearly involved in arranging the deal for Mr A.

In May 2018, COBS 2.1 said:

"A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule)".

COBS 10A applied to 'a firm which provides investment services in the course of MiFID or equivalent third country business'.

COBS10A.2 said:

"When providing a service to which this chapter applies, a firm must ask the client to provide information regarding that client's knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded to enable the firm to assess whether the service or product envisaged is appropriate for the client".

COBS10A.2.3 said:

"Investment firms shall determine whether that client has the necessary experience and knowledge in order to understand the risks involved in relation to the product or investment service offered or demanded when assessing whether an investment service […] is appropriate for a client".

COBS10A.2.4 said:

"Investment firms shall ensure that the information regarding a client's or potential client's knowledge and experience in the investment field includes the following, to the extent appropriate to the nature of the client, the nature and extent of the service to be provided and the type of product or transaction envisaged, including their complexity and the risks involved:

(a) The types of service, transaction and financial instrument with which the client is familiar;

(b) The nature, volume and frequency of the client's transactions in financial instruments and the period over which they have been carried out;

(c) The level of education and profession or relevant former profession of the client or potential client".

In the event that a client failed the appropriateness assessment, COBS10A.3.1 said:

"If a firm considers, on the basis of information received to enable it to assess appropriateness, that the product or service is not appropriate for the client, the firm must warn the client".

COBS10A.3.3 provided the following guidance:

"If a client asks a firm to go ahead with a transaction, despite being given a warning by the firm, it is for the firm to consider whether to do so having regard to the circumstances".

In 2019 the FCA provided further guidance about the sale of mini-bonds to retail investors. Although this guidance was provided after the May 2018 investment I still consider this relevant as the information provided wasn't new, it simply re-stated the FCA's position.

It said that minibonds "typically offer high yields but this reflects the much higher risks involved'. It said that mini-bonds were 'typically offered by small or start-up companies, or companies that find it difficult to raise capital from institutional investors".

Additionally, the FCA said bond issuers "could face cash flow problems that delay interest payments, or […] could fail altogether and be unable to repay the money investors have lent it".

Further mini-bonds were "also highly illiquid' because, unlike ordinary retail bonds, 'mini-bonds do not have a secondary market".

It said that minibonds typically offered high returns, reflecting much higher risks involved in the investment – and this was the case the Audley Bond bought by Mr A.

Our investigator concluded that the Audley Bond was not suitable for Mr A, and I have reached the same conclusion.

The PCP and CIF documents confirm that Mr A had no experience of any investments similar to the Audley Bond with the only prior investments being identified as investment funds / unit trusts.

The investment made up a significant amount of Mr A's retirement provision and exposed him to a high degree of risk.

Whilst the documentation issued to Mr A did note the high-risk nature of the bond, I do not believe this was sufficient. Given Mr A's lack of experience, COBS10 referenced above, makes it clear LSS needed to do more, should have gone further and explained the unsuitable nature of the investment. Had this been done, I see no reason why Mr A would have ignored LSS and insisted on the investment.

I have noted LSS's comments that the Audley bond was not a mini bond as at the time of purchase it was traded on a regulated stock exchange. Whilst this may negate some of the FCA commentary above, I note that the Audley bond did hold some of the same *characteristics of a mini bond and as such consider the inclusion of the FCA commentary informative.*

Overall, regardless of the precise status of the Audley bond, I consider it likely that such an investment should never have been marketed to Mr A, and clear that the investment sat outside of Mr A's investment experience and appetite for risk.

As I have concluded Mr A wouldn't have invested had LSS told him it was unsuitable as they should have done, and given LSS's regulatory obligations, it is reasonable to hold LSS accountable for Mr A's losses."

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.

Neither party has provided a response to the provisional decision and as such I see no reason to make any changes to it. I remain of the opinion that the outcome outlined above is fair and reasonable in this case.

The redress details below also remain unchanged from those detailed in my provisional decision.

Putting things right

Fair compensation

My aim is that Mr A should be put as closely as possible into the position he would probably now be in if he had been given suitable advice.

I think Mr A would have invested differently. It's not possible to say *precisely* what he would have done, but I'm satisfied that what I've set out below is fair and reasonable given Mr A's circumstances and objectives when he invested.

What must LSS do?

To compensate Mr A fairly, LSS must:

- Compare the performance of Mr A's investment with that of the benchmark shown below. If the *actual value* is greater than the *fair value*, no compensation is payable.

  If the *fair value* is greater than the *actual value* there is a loss and compensation is payable.

- LSS should also add any interest set out below to the compensation payable.

- If there is a loss, LSS should pay into Mr A's pension plan to increase its value by the amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

- If LSS is unable to pay the compensation into Mr A's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore, the compensation should be reduced to *notionally* allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr A won't be able to reclaim any of the reduction after compensation is paid.

- The *notional* allowance should be calculated using Mr A's actual or expected marginal rate of tax at his selected retirement age.

- It's reasonable to assume that Mr A is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr A would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

Income tax may be payable on any interest paid. If LSS deducts income tax from the interest, it should tell Mr A how much has been taken off. LSS should give Mr A a tax deduction certificate in respect of interest if Mr A asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
SIPP	Some liquid/some illiquid	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	Date of investment	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)

Actual value

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

It may be difficult to find the *actual* value of the portfolio. This is complicated where an asset is illiquid (meaning it could not be readily sold on the open market) as in this case.

LSS should take ownership of the illiquid assets by paying a commercial value acceptable to the pension provider. The amount LSS pays should be included in the actual value before compensation is calculated.

If LSS is unable to purchase the portfolio the *actual value* should be assumed to be nil for the purpose of calculation. LSS may require that Mr A provides an undertaking to pay LSS any amount he may receive from the investment in the future. That undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan.

LSS will need to meet any costs in drawing up the undertaking.

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 (as is the case for half of the assumed investment here), LSS 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. Those rates should be applied to the investment on an annually compounded basis.

Any additional sum that Mr A paid into the investment should be added to the *fair value* calculation at the point it was actually paid in.

Any withdrawal from the portfolio should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if LSS totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

The SIPP only exists because of illiquid assets. In order for the SIPP to be closed and further fees that are charged to be prevented, those investments need to be removed. I've set out above how this might be achieved by LSS taking over the investment, or this is something that Mr A can discuss with the provider directly. But I don't know how long that will take.

Third parties are involved and we don't have the power to tell them what to do. If LSS is unable to purchase the investment, to provide certainty to all parties I think it's fair that it pays Mr A an upfront lump sum equivalent to five years' worth of wrapper fees (calculated using the fee in the previous year to date). This should provide a reasonable period for the parties to arrange for the SIPP to be closed.

Why is this remedy suitable?

I've chosen this method of compensation because:

- Mr A wanted Capital growth with an element of risk to his 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 his 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 made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.
- I consider that Mr A's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr A into that position. It does not mean that Mr A would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr A could have obtained from investments suited to his objective and risk attitude.

Where I uphold a complaint, I can award fair compensation to be paid by a financial business of up to £150,000, plus any interest and/or costs/ interest on costs that I think are appropriate. If I think that fair compensation is more than £150,000, I may recommend that the business pays the balance.

Decision and award: I uphold the complaint. I think that fair compensation should be calculated as above. My decision is that London Stone Securities Limited should pay Mr A the amount produced by that calculation – up to a maximum of £150,000. Plus any award of interest and/or costs/ interest on costs.

Recommendation: If the amount produced by the calculation of fair compensation is more than £150,000, I recommend that London Stone Securities Limited pays Mr A the balance.

This recommendation is not part of my determination or award. London Stone Securities Limited doesn't have to do what I recommend. It's unlikely that Mr A can accept my decision and go to court to ask for the balance. Mr A may want to get independent legal advice before deciding whether to accept this decision.

My final decision

In line with the rationale above I am upholding this complaint and require London Stone Securities Limited to calculate and pay redress in line with the methodology outlined.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 17 December 2024.

John Rogowski
Ombudsman