DRN-5142704

The complaint

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

Mrs A's husband (Mr A) has made a similar complaint about similar advice he 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.

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

In October 2017 Mrs A completed the transfer forms to move her pensions to AJ Bell. From there the funds could be invested in line with recommendations from LSS.

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

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

- Had no investment experience.
- Considered her knowledge of the stock market to be basic.
- Wanted to target capital growth.
- Wanted to consider investments in individual shares (noted as being medium risk).
- Recorded that Mrs 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 Mrs A confirmed she 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.
- Mrs A was recorded as being aged 44, in good health, married with one dependant, and employed a Director of a Company.
- Mrs A had £101,000 in existing pensions and £12,000 in NS&I savings.
- The family home was noted as being valued at £900,000 with a £320,000 mortgage in place.

On 15 December 2018 Mrs A completed LSS's Client information form ('CIF'). This stated Mrs A had 1-5 years of investing in a manager portfolio and confirmed Mrs A wanted an advisory service.

Also, on 15 December 2017 Mrs A signed LSS's "risk disclaimer". This confirmed that Mrs A did not want to receive risk warnings whenever she agreed to a trade and that she understood the general risks of the stock market.

Finally on 15 December 2017 Mrs A signed LSS's "Investing in AIM shares" disclaimer which confirmed that she had agreed to invest in a number of AIM shares as part of a larger investment portfolio, that she understood the risks of AIM and penny shares, that she was aware these were high risk – high reward, and that these investments may sit outside of her original PCP.

The initial investments recommended were five investment trusts with an amount of around £10,000 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 subsequently made.

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

In July 2019 Mrs A gave authority for Mr A to agree to transactions on her behalf.

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. FTSE 250 - £8k positions.*
>
> *c. FTSE 100 - £10k positions.*
>
> *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. FTSE 250 - £7k positions.*
>
> *c. FTSE 100 - £8k positions*

The new strategy was discussed further with Mr A.

With regard to risk, it was 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 (for Mr A) had been agreed as this allowed the investment to be spread over several companies to mitigate the risk associated with any on 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.

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, and amount of around £41,000 was transferred away.

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 Mrs A referred her 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.

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 and Mrs A should not be absolved of all responsibility given they 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 which stated:

"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 Mrs 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 Mrs 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 Mrs 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.

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.

I have concluded that the investments recommended were, overall, unsuitable. The redress below reflects the rationale above."

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

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

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

What must LSS do?

To compensate Mrs A fairly, LSS must:

- Compare the performance of Mrs 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 Mrs 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 Mrs A's pension plan, it should pay that amount direct to her. 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 Mrs A won't be able to reclaim any of the reduction after compensation is paid.

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

- It's reasonable to assume that Mrs A is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mrs 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 Mrs A how much has been taken off. LSS should give Mrs A a tax deduction certificate in respect of interest if Mrs A asks for one, so she 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	No longer in force	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 the pension ceased to be held.	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.

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 Mrs 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.

Why is this remedy suitable?

I've chosen this method of compensation because:

- Mrs A wanted Capital growth with an element of risk to her 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 her 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 Mrs A's risk profile was in between, in the sense that she was prepared to take a small level of risk to attain her investment objectives. So, the 50/50 combination would reasonably put Mrs A into that position. It does not mean that Mrs A would have invested 50% of her 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 Mrs A could have obtained from investments suited to her objective and risk attitude.

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 Mrs A to accept or reject my decision before 17 December 2024.

John Rogowski
Ombudsman