

The complaint

Ms D has complained about the service she received from Capital Professional Limited ('Capital Professional'). This delayed the transfer of her account, and she says the performance of her investments suffered because of the delay. She would like the fees repaid her.

Ms D is represented by her mother, Mrs O, in bringing her complaint.

What happened

Ms D's parents had received advice from Capital Professional about their investments for 15 years. Ms D also had an ISA account with Capital Professional which was held on a third-party platform.

Ms D's parents met with Ms D's adviser – 'M' – at Capital Professional on 2 March 2023, but they didn't receive any subsequent service. Ms D's adviser had recommended moving her account to another financial business for her ISA to be managed on a discretionary basis, but due diligence needed to take place first.

In April 2023 Ms D's parents were informed her adviser had retired from Capital Professional. They didn't hear from the replacement adviser and were concerned about the due diligence that was to be carried out for the new financial business. Ms D's parents had a meeting with Ms D's new adviser on 6 June 2023, but no subsequent report was provided. At the beginning of 2024 Ms D moved her ISA to a different financial adviser. In the meantime, Ms D's parents raised their concerns with Capital Professional.

In order to resolve the complaint, Capital Professional told us it would refund the fees paid by Ms D, but didn't provide any detail. Our investigator who was considering the complaint continued with her investigation and concluded Capital Professional hadn't acted fairly. She said;

- It wasn't in dispute that Capital Professional failed to provide Ms D with the bi-annual review during 2023 or 'Unlimited access to her allocated Financial Adviser'. The dispute was about when the refund should start and whether other losses should be compensated.
- The investigator thought the fees from and including April 2023 should be refunded. The fees were paid on 3 March 2023 and 11 April 2023. A service was provided on 2 March 2023 as a review meeting was held but the subsequent expected report wasn't. So, the fees taken from April 2023 should be refunded.
- Some of Ms D's investments may have been sold to pay the monthly fees and there wasn't any evidence that cash couldn't have been added to pay for those. So, if investments had been sold to pay the fees there had been no reason to do so. As the ongoing service wasn't provided after April 2023, and if any investments had been sold, they shouldn't have been.
- There was no evidence that ongoing management of Ms D's ISA was part of the

service agreement. The half year review wasn't carried out so the investigator didn't uphold this part of the complaint as it wasn't agreed that Capital Professional would manage the investments.

- The investigator didn't uphold Ms D's complaint that she had lost out by not transferring her investments to a different provider. Despite this being a consideration, it hadn't been recommended by Capital Professional.
- To put the matter right, Capital Professional should reverse any sales made each month to pay for the fees and calculate the current value of those investments and pay this to Ms D in cash.

Capital Professional didn't respond to the investigator.

As the complaint remained unresolved, it was passed to me for a decision in my role as ombudsman.

After reviewing the information presented to me, I provisionally reached the same conclusion as the investigator and broadly for the same reasons, but I thought the matter should be put right in a different way. I issued a provisional decision to allow the parties to provide me with any more information or evidence before I issued my final decision. Here's what I said;

'The service provided

Ms D used the Bespoke service that was offered by Capital Professional. The Service and Client Agreement outlined the 'minimum' this would include;

- A financial plan tailored to Mr D and Mrs O's goals
- Lifetime Financial Planning if requested
- Access to 'The Portal'
- Bi-annual review
- Bi-annual portfolio valuation
- Unlimited access to their allocated financial adviser
- Quarterly newsletter
- Bi-monthly investment emails
- Annual general investment account to ISA transfers
- Fund switches
- Access to Capital Professional's Specialist Tax and Trust team
- Liaison with third party professional
- A personalised 'Your Folio' document

An annual fee would apply and any renewal, fund-based or trail commission would be offset against that fee.

In his email of 31 January 2023 to Ms D's parents' M recommended an alternative provider. Further to this, Mrs O says they were advised during the meeting of 2 March 2023 to consider moving Ms D's investments to a discretionary fund manager.

There is some discrepancy here as Mrs O thought the adviser was recommending the use of the services of another party – 'B' – but on 13 April M messaged to say his;

'recommendation is to use a Discretionary managed portfolio service. This required a formal report, and it will provide a full cost comparison.'

This ties in with the service outlined in the Service and Client Agreement where Capital Professional said it would undertake due diligence of a discretionary fund manager.

The evidence on file makes clear here Ms D's parents had been advised about transferring her ISA account to a discretionary fund manager. The expected due diligence report was never received despite a meeting in June 2023, and it being chased for. So, I do agree that Capital Professional failed to provide the service it had agreed to. It follows that I think this part of Ms D's complaint should be upheld and the ongoing fees she paid after March 2023 until she was able to remove her portfolio from Capital Professional should be repaid to her.

Sales for fees

It may be the case that shares were sold from Ms D's ISA in order to repay the fees if there wasn't enough cash on the account. Ms D's parents did ask about being able to add cash as an alternative way of paying the fees but say they were told there was no option.

Capital Professional didn't make any comment about this point in its final response letter, nor did it respond to the investigator's assessment. So, I haven't been given any evidence or information that would cause me to conclude that cash couldn't be added to pay the fees which is what Ms D's parents wanted to do. And as I'm satisfied that Ms D didn't receive the service she was paying for after March 2023, and if investments were sold to pay the fees for that service, I think this needs to be put right.

The proposed transfer and potential losses

I can see as part of Capital Professional's Service and Client Agreement it offered referral to a discretionary fund manager if appropriate. And that it said it would undertake due diligence of the discretionary fund manager and attend initial and review meetings. It would remain as the adviser and continue to provide an ongoing service.

Ms D's parents emailed M to ask whether it was still his recommendation to transfer their portfolio to B. Confirmation and details of fees were asked for in order for Ms D to make a decision. M responded to this request saying that he had submitted the request and details of the investment solution and costs would be provided. After M left Capital Professional Mrs O chased on 23 May 2023 further to a request for a report on the investments as 'this is particularly important as we are advised and proposed to move to [B]'.

However, no report was provided, and Ms D says she potentially incurred losses by not transferring her portfolio to B. Ms D has said she couldn't move her portfolio without the assistance of Capital Professional as the platform used for her investments was for professionals only. But I understand she eventually was able to move to a different business.

I don't think it would be fair or reasonable for me to conclude that Ms D had suffered a loss because of the lack of report about a potential transfer. Capital Professional didn't recommend that Ms D transfer her ISA account to B. And it can't be known how her ISA account would have looked in comparison to her account with Capital Professional if that recommendation had been given and the transfer had taken place. In any event, as far as I am aware, Ms D didn't transfer her account to B. So, I don't uphold this element of Ms D's complaint.'

I concluded by saying that Capital Professional should repay fees since April 2023 as well as the value of any investments sold plus dividends and interest.

Capital Professional didn't respond. Mrs O replied to say that she accepted my provisional decision but wanted to comment;

- The investigator had said there was no evidence that ongoing management of Ms D's investment was part of the service agreement, and it wasn't agreed that Capital Professional would manage the investments. Mrs O disagreed with this and referred to the 'The Service Provided' list. Capital Professional were managing the investments and the adviser regularly reviewed the portfolio and offered an annual meeting.

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.

In my provisional decision I did make reference to Capital Professional's potential transfer to a discretionary fund manager but that it would remain as adviser and continue to provide an ongoing service. And Mrs O told us the regular advice and meetings were provided by their adviser. So, it seems likely ongoing advice was given. However, I concluded that this service wasn't provided after April 2023 hence my award of a refund of fees from April 2023.

I hope my comments have been useful. As Mrs O on behalf of Ms D accepted my provisional decision and Capital Professional didn't respond with anything further for my consideration, I see no reason to depart from my provisional decision and confirm those findings.

For completeness I will reiterate how the matter should be put right as outlined in my provisional decision.

Putting things right

When putting a matter right, this service looks to put the customer back in the position they would have been in if the error hadn't occurred. As Ms D has now moved her ISA, it's not possible for Capital Professional to reinstate her ISA as if the shares hadn't been sold. Because of this I think Capital Professional should repay any fees since and including all of the fees paid in April 2023 by;

- Calculating the value of any investments sold to pay fees as at date Ms D's ISA was transferred to her new provider.
- The value of those sold investments as at the date of transfer should be paid to Ms D to reflect a refund of the fees paid for a service that wasn't provided.
- The above value should include any dividends on the sold investments that were paid after the date(s) they were sold until the date of transfer.
- And because Ms D has been deprived of the money during this time, Capital Professional should add 8% simple interest from the date of transfer to the date of settlement.

Alternatively, if no sales of investments were carried out and cash taken instead, then Capital Professional should refund all of the fees taken from the ISA plus 8% simple interest from the date(s) the cash was taken from the account to the date of settlement.

Ideally any redress should be paid back into the ISA, but the fees taken are a relatively small amount of money, and I haven't been given anything to show the Ms D can't manage her ISA and add this back into her ISA in future years if she wants to.

My final decision

For the reasons given, my final decision is that I partially uphold Ms D's complaint and Capital Professional Limited should put the matter right as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms D to accept or reject my decision before 7 February 2025.

Catherine Langley
Ombudsman