

The complaint

Mrs K, Mr K1 and their son Mr K2 have raised several complaint issues, regarding the way CubicStone Capital Management Limited (CCM) managed their investment portfolio.

Mrs K, Mr K1 and Mr K2 are being represented with this complaint.

What happened

Mr and Mrs K and their son, were previously clients of the financial adviser in question at a different advisory firm.

In 2018, the adviser contacted them to make them aware that he had now set up his own firm, who were an appointed representative of CCM. Later that year, in September 2018, he advised them to invest in a discretionary portfolio through him.

The investment and arrangement remained until January 2022 and in the April that year, they complained to CCM. Amongst several complaint points, they said:

- Mr K1's health and vulnerability were not considered,
- Fees and charges were not made clear or explained,
- A failed bank transfer of the amount to be invested caused considerable delay and financial loss,
- Unsuitable advice had been given and performance data had been manipulated, and,
- Regular reviews as set out in the discretionary arrangement were not carried out.

CCM responded in full in June 2022. They said that performance of the portfolio had been good and above expectations. They said the fees had been set out clearly and they had given the service as set out in the agreement. They also disputed they were at fault for any transfer delays and loss of interest. They denied treating Mr K1 unfairly.

As Mr and Mrs K and their son remained unhappy, they brought their complaint to our service for an independent review. Our investigator looked into it, and upheld it in part. He said that the charges hadn't been made sufficiently clear but that the investment would have been made anyway, so there was no loss there. He agreed with CCM's response on all other points apart from the provision of regular reviews. He didn't believe that part of the agreement had been adhered to and suggested a 25% fees refund and £300 compensation. Neither Mr and Mrs K and their son, nor CCM, were happy. They both asked for the complaint to be reviewed by an ombudsman.

CCM maintained that all fees and charges were made clear. They said that although not all bi-annual reviews might have gone ahead, they were in more regular communication than that and even more regular reviews had been offered. They therefore argued that the portfolio had suffered no loss because of this.

The customers' representative replied in full. Amongst their points, they maintained the investment wouldn't have gone ahead had all fees and charges been made clear. They also said that there had been "deceptive" advice in regard to one bond. They said the advisor had caused further loss of interest for the failed initial transfer and that compensation for the lack of regular reviews amongst other issues, should be a lot higher than the investigator suggested.

As no agreement was reached, the case is now with me to reach a decision. I issued my provisional findings on the matter on 31 May 2024, an extract from which forms part of my decision below.

Many points have been made in relation to this complaint – I haven't addressed each one individually. Instead, I've focused on what I consider to be the pertinent points. That isn't meant as a discourtesy, it simply reflects the informal nature of our Service. I've set out the key issues I think are important here. And I've answered them below in turn.

Were fees and charges made clear?

Mrs K, Mr K1 and Mr K2 have complained through their representative, that the charges that applied to their investments through CCM were not made clear. To consider this, I have been provided with, amongst other documents, the client agreement, fact find, suitability report and transcripts of conversations with the adviser.

The fees that applied to this portfolio, included a 0.78% per annum management fee, paid quarterly in arrears to CCM. There was also a 0.22% brokerage fee charged by the custodian bank (and a credit spread of 1%). There were some other fees chargeable by the custodian bank and these include a market access service fee, a credit fee and a foreign exchange transaction commission.

CCM say these fees were all detailed at different points around the time of advice. They say the suitability report detailed that there were "brokerage fees" that would be "charged to you separately" by the custodian bank, and to "see the appendix for details of these charges". Having reviewed these, I am satisfied the other charges were set out. The client agreement also stated, "Any other fees, e.g. for custody and brokerage, and taxes will be charges to the client separately."

Mrs K, Mr K1 and Mr K2 say these fees weren't sufficiently made clear to them. They have pointed to transcripts of conversations with the advisor, in which he said, "you know that there would be no charges other than 1% as per our agreement". They have also said that the separate fees were not detailed clearly in the initial client agreement signed by all three. The latter agreement, giving more detail, was only signed by Mr K1, who I am aware doesn't read English.

Based on this, and considering the Financial Conduct Authority's (FCA) rules stipulated in their Conduct of Business Sourcebook ("COBS")4.21 R that CCM must ensure that a communication is fair, clear and not misleading, I don't think they did enough with regard to the fees chargeable. However, I have to then consider whether the investment would have gone ahead had the separate fees (included in some

literature) been made clear. I agree with the investigator that I believe it would have done.

CCM have evidenced that there was a considerable saving, when the portfolio was moved over to their management. They have also shown that the only fees charged in excess of the 1% were options transaction charges. Options was an investment choice specified and used previously. Having considered all of this, I am satisfied that has all fees and charges been made sufficiently clear, Mrs K, Mr K1 and Mr K2 would still have gone ahead with the investment. CCM therefore don't need to do anything here to put things right. However, I do believe Mrs K, Mr K1 and Mr K2 suffered a loss of expectation in regard to the charges and considering the limited impact of this, I agree £300 compensation for the distress and inconvenience caused would be sufficient.

Do CCM need to compensate for any failed bank transfer?

Mrs K, Mr K1 and Mr K2 have also complained that they haven't been fairly compensated for an initial failed transfer of funds. They say CCM gave them incorrect details to transfer the amount to.

However, I am satisfied from the available evidence that the incorrect details came from a third party (the custodian bank). I can't hold CCM responsible for that. CCM did then commit to resolving the matter. However, the money was moved into something (not on the say of CCM) which meant it wasn't accessible for a period of time. I don't hold CCM responsible for any delay here.

Did CCM consider Mr K1's ill health and any vulnerability?

Mr K1 has said that he has been suffering from serious health issues at the time of the advice and subsequently. He has stated that he should have been treated as a vulnerable customer, which CCM have confirmed they didn't do.

CCM have provided evidence that Mr K1 continued to work and carry out duties which show he was able to make decisions such as investing. I haven't been provided with sufficient evidence to show this wasn't the case. I am also aware that he was investing with his wife and son. The agreement was also a discretionary managed portfolio, meaning ongoing responsibilities lay with CCM. Even if I had have determined that CCM hadn't treated Mr K1 fairly, I haven't been provided with any evidence that Mr K1 would have done something differently had he been deemed a vulnerable customer.

Was unsuitable advice given and performance data manipulated?

Mrs K, Mr K1 and Mr K2 have also complained about the way that performance data is presented by CCM. They believe it's manipulated and misleading. As explained by the investigator, the complaint isn't that it has caused any specific detriment to them

and so this is a general complaint and not something for me or this service to comment on. I haven't seen anything to conclude that the initial advice to invest in the portfolio was unsuitable for Mrs K, Mr K1 and Mr K2. I also note that CCM have evidenced that the return was greater than any benchmark for redress we would award, if we had concluded the advice was unsuitable.

There is also a specific complaint that one of the recommended bond investments within the portfolio, was sold based on misleading statements by the adviser. He was recorded as saying "We would receive 5-6% from this" and, "We would receive even more". The representative says this element of the investment made a loss. However, I don't agree this was a guarantee provided by the advisor. He was giving his view on what it will return and qualified it with, "We have always done". I am satisfied that Mr K1 (who the conversation was with), knew that the performance wasn't and couldn't, be guaranteed. This will have also been made clear from the supplementary point of sale documentation.

Were regular reviews carried out in line with the discretionary arrangement?

As part of the discretionary arrangement entered into, CCM were to provide bi-annual reviews. They haven't been able to evidence they did this.

I appreciate their comments that there were regular communications and that there were no significant change in circumstances that would have warranted a change in investment approach. However, I still believe that Mrs K, Mr K1 and Mr K2 were paying for a service (out of the 0.78% p.a management fee) that they weren't receiving.

I haven't seen a breakdown of the management fee and what percentage of it (if any) was attributed to the bi-annual reviews. In the absence of this, and considering that there were regular communications and the portfolio was being actively managed, I agree that a 25% refund of fees is a fair figure. However, this should be refunded at a rate of return in line with what it would have generated had the amount been invested.

In summary, I only uphold this complaint in part. Whilst I think CCM should have explained their fees and charges more clearly, I don't believe this has caused Mrs K, Mr K1 and Mr K2 any detriment. They would have gone ahead with the investment regardless. There was a loss of expectation and £300 compensation is sufficient. However, CCM haven't carried out regular reviews in line with the agreement. Mrs K, Mr K1 and Mr K2 have therefore not received the full service they have been paying for and should receive some rebate for that, as I have set out below.

Mrs K, Mr K1 and Mr K2 responded to say they were deeply disappointed with my findings. They maintained there'd been deception as to the costs and product. They said that even without compensation for other losses, the refund should be higher, 50% rather than 25%. They also said they wouldn't have entered into the agreement if they had known the failing that would incur, and so should be compensated approximately £10,000 in costs.

CCM also responded to say they didn't agree with the provisional findings. They said there were regular and high-touch communications throughout, with positive feedback of the adviser given. They said meetings had been cancelled and declined, and provided evidence of this. They also provided a calculation of the time spent on this portfolio and what would have been spent on the missed bi-annual reviews. Which they said gave a more realistic

figure of less than 2% of the fees paid. They highlighted this was significantly less than the 25% refund award.

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.

I appreciate the comments put forward by Mrs K, Mr K1 and Mr K2 but they haven't presented anything that would make me depart from the findings I set out in my provisional decision. They have suggested the missed bi-annual reviews would make up about 50% of the fees paid but haven't provided any context or evidence to support this. They have also said that they wouldn't have gone ahead had they known the reviews wouldn't take place or the extent of costs. However, they haven't provided any further evidence to consider to substantiate this and I don't agree. There isn't any evidence of them actively chasing the reviews or considering ending the arrangement. Further, I have been provided evidence of them missing and cancelling meetings, which suggests it wasn't a high priority for them.

I have also considered the response from CCM but my decision remains as I set out previously. I appreciate there were regular communications, which I noted before. However, this is very different to a bi-annual review of a customer's circumstances and the suitability of current investments. Which is what was offered and agreed to when the arrangement was entered into. I also don't accept that a more reasonable refund figure is less than 2%. The hours they have suggested would be spent on a bi-annual review (four to five a year) doesn't seem fair or realistic. I note that CCM themselves emphasised the importance of the reviews in their suitability report.

In summary, I maintain that even if the fees and charges had been presented more clearly, the investment and arrangement would have gone ahead. There was a loss of expectation and £300 is sufficient compensation for that. The ongoing advisory service through bi-annual reviews was not done, despite being offered and highlighted at inception. For that I think a part refund of fees is due.

Putting things right

CCM should refund 25% of the total management fees paid to them. The refund should be paid, in line with any return it would have generated, had the amount been invested, from the date the fee was paid.

In addition, I think CCM should pay a total of £300 in compensation for the inconvenience caused and loss of expectation.

My final decision

My final decision, for the reasons set out above, is that I uphold this complaint in part against CubicStone Capital Management Limited, and require them to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K, Mr K and Mr K to accept or reject my decision before 25 July 2024.

Yoni Smith

Ombudsman