

The complaint

Two trusts (which I've referred to here as "P" or "the trusts"), complain the level of service Capital Professional Limited ("CPL") gave them decreased when the CPL adviser changed. They seek a refund of the service charge they say each of the trusts paid to CPL.

The complaint is brought by trustees of the trusts. The complaints of both trusts are being considered together here for convenience as the trusts share trustees and the events that form the substance of their complaints is the same for both (and the complaints were brought to us together and responded to together by CPL).

What happened

In April 2021 CPL carried out an annual review for the trusts. It says an interim review was carried out in December 2021. In May 2022 CPL's financial advisor for the trusts left. A new advisor was allocated by CPL and introduced himself to the trustees in June 2022 with an apology that an annual review had been due in April 2022. An annual review of the trusts' investments was arranged and took place remotely online in August 2022.

The trustees say CPL didn't follow up on the advice given during that review or give a written report detailing what was discussed, in the way the trusts' previous CPL advisor had done. They say CPL informed them trust investments might carry too much risk but didn't follow this up and the investments underperformed. They also say CPL didn't carry out instructions they gave in March 2023 to make withdrawals in that tax year.

Our investigator considered the complaint. He thought, in brief summary:

- FCA rule COBS 6.1A.22 provides that unless regular payments are being made to a product, a firm can't use an adviser charge that is payable over time unless this is for ongoing personal recommendations or related services and the firm has disclosed the service and the charge and given a reasonable right to cancel it without penalty.
- CPL's client agreement fulfilled the disclosure requirements by clearly setting out the services to be provided, the associated ongoing charges and the facility to cancel the service. The question is whether it provided the service agreed.
- The FCA 'Ongoing Adviser Charges' factsheet provides that ongoing charges should, except for regular payment products, be levied only where a consumer is paying for ongoing service, like *"a performance review of their investments"* and firms must *"make sure your clients receive the ongoing service you have committed to"*.
- An annual review was an expected service under the client agreement. Also, FCA rule COBS 2.3A.9(2)(a) provides that ongoing advice is provided at least annually, but not necessarily at the same time each year.
- CPL provided advice and financial reviews while making the ongoing charges. The issue is whether this was provided to a sufficient level after the adviser change in 2022. The trustees say the service level was reduced.

- Since the adviser change CPL hadn't, as it had before, provided typed notes for the trustees before taking their instructions – but the client agreement didn't promise this. But CPL ought to have given a written note of any review meeting, to record any recommendations made and what had been agreed or not agreed. The last written note provided to the trusts was in 2021 before the adviser change.
- At the August 2022 review the possibility was discussed of withdrawing funds for tax efficiency. The trustees have said further information or advice wasn't given on this and CPL didn't act on the March 2023 instruction it was given. But CPL didn't have to act until it received an instruction, and the evidence doesn't refute its suggestion that this was received too late to be carried out before the tax year ended. The trustees could've asked for more information from CPL if it was wanted.
- CPL rightly accepted it didn't give enough information after the meeting in August 2022. On the evidence provided, the trustees wouldn't have felt well informed from the point at which the adviser changed. CPL did try to set up a review meeting in March 2023, but this was rejected due to personal circumstances of the trustees.
- CPL made efforts to maintain its service level after the adviser change, but it didn't meet the service level it was being paid for or the minimum required under its client agreement or FCA rules. It offered to provide annual reviews but the review it conducted in 2022 was done remotely online and wasn't followed up with any written report for the clients.
- The service level the trusts agreed with CPL required a higher level of service than was provided.
- CPL upheld the complaint in part. The £200 it offered was reasonable for distress and inconvenience. It should also refund the fees charged since August 2022 (until May 2023 when the trusts and trustees stopped using CPL's services) and pay interest at the gross rate of 8% simple on this refund.
- The trustees believe the refund should be from May 2022, but it wasn't until August 2022 that that CPL started to fail to fulfil its service level. Until then it had given a higher level of service at and following its annual reviews. Also, there is no evidence advice was requested of CPL between May 2022 and August 2022 or that CPL failed to respond to such a request or otherwise fell short of its duties during that period.

CPL didn't accept our investigations conclusion and said, in brief summary:

- It didn't understand why or agree that there should be a full refund of fees for the period August 2022 to May 2023. It accepted it didn't provide "*a report / notes*" after that review and that until March 2022, when the clients confirmed their wish to proceed, there was no follow-up documentation for the August 2022 "*meeting / review*". But it didn't fail to complete a review and the trusts ceased to be clients before another review could be completed in 2023.

Our investigator's view remained the same. He thought, in brief summary:

- The trusts paid for a service level above the lowest offered in the client agreement (although not the highest), so it was reasonable to expect more than a minimum level of service. The review taking place was a minimum level of service. But without a written report the trusts didn't have a record of it and wouldn't have been able to review the discussion when deciding what to do next. Though they left before another review could

be done, they didn't receive the service they paid for up to that point. It also wasn't the service level the trusts had become used to with CPL's previous advisor. The argument that they didn't receive the service for the whole year, wasn't accepted though.

- There wasn't a fixed time for the review, but this meant it could happen earlier or later.

The trusts accepted the investigator's suggested outcome and had nothing new to add. CPL maintained its disagreement with the investigator's outcome. As the matter couldn't be resolved informally it has been passed to me to decide.

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've arrived at broadly the same conclusion as our investigator, for broadly the same reasons.

CPL did carry out a review in August 2022. The trustees were accustomed to receiving a written record of such meetings as part of their arrangement with CPL. But I can't see CPL's agreement with the trusts' trustees promised a written record would be provided.

A written record wasn't provided. So although it is clear a review did take place, there is an absence of clear evidence as to what took place exactly and as to the quality of the service or advice that was given.

The trustees say CPL suggested at the meeting that the trusts might be too exposed to risk. I understand this relates to concentration risk from having a lot in one provider's fund. CPL says it noted both trusts had the same mix of funds, dominated by one provider. So this much is agreed between the parties. But CPL says:

"Whilst [CPL] raised concerns with regard to this fund, no formal advice in respect of switching was given, nor agreed by [the trustees], it was merely a point of consideration for all parties." CPL also says the trustees were happy to leave things as they were and think about it *"as it was not urgent"*.

It seems to me the essential purpose of a review of existing arrangements by an adviser is to check those arrangements are still appropriate and suggest changes if they are not. CPL says it raised *"concerns"* about portfolio concentration but without giving any 'formal advice' and it was left to the trustees to decide for themselves if further action should be taken. This tends to undermine rather than support CPL's assertion that it did fulfil the minimum level of service the trusts were reasonably entitled to expect. I say this bearing in mind the trustees signed up for a level of service which was supposed to be above the minimum level. On its own account what CPL did was incomplete, as it either expressed no concluded view on the issue or did so without recommending any solution.

CPL says handwritten meeting notes support its account of the meeting. Assuming CPL is right in how it interprets these rough notes, they only show CPL's understanding of the meeting at the time. They don't show that this is also what the trustees understood – so it doesn't show that the trustees didn't expect or shouldn't have expected CPL to take further action on this issue or that the trustees understood that it was for them to think about it and decide on action. Such a misunderstanding was an obvious risk and disadvantage of not sharing a written note of the meeting with the trusts. I'd add that in my view the onus was on

CPL to be sure that the trustees understood what had been agreed at the meeting and what they needed to do next. So even if I accept CPL's view that the trustees were mistaken in expecting it to follow up on certain areas discussed in the meeting, it seems to me this misunderstanding was down to shortcomings in how CPL discharged its service to the trusts.

I'd add that the fact the parties seem to agree that CPL had previously given the trusts more in writing when providing its service, reinforces my view that it was important for CPL to be sure that the trusts understood at the meeting what steps CPL would and wouldn't be taking for them in future and what the trusts needed to do themselves. From what I've seen I'm not persuaded the trusts were left with a sufficiently clear view of this following the review.

I note that the idea of withdrawing funds in the current tax year, which I gather came from CPL at the meeting, wasn't followed up in time by either CPL or the trustees and the chance was missed. It seems to me that this reinforces what I've said above about the evidence not supporting the idea that CPL made sufficiently clear to the trusts what it was suggesting that they do or consider and what they had to do next. I don't have enough to say that the chance was missed entirely due to CPL's error – and I note the trustees would've been aware the withdrawal hadn't been made as the tax year end approached. But like our investigator I take the view that this episode tends to undermine rather than support the idea that CPL provided to the trusts a service at the meeting of a sufficient standard.

It appears CPL agrees there were delays in *"issuing... paperwork following [the] meeting in August 2022"* resulting in *"a lack of forthcoming information"*. It says: *"documents were difficult to locate and it took our admin teams some time to find them, which caused delays"*. I accept that a change of adviser will quite reasonably involve changes to the detail of how a service is offered – and that some disruption might also be anticipated as a result of the handover. So while I note there were some such administrative issues experienced by the trusts, which CPL has acknowledged, my conclusion here does not depend on those. But looking at the service provided by CPL overall from the August 2022 review onwards, I'm unable to conclude that CPL provided a service of the nature and quality that the trusts were entitled to expect. So I uphold the complaint.

I note CPL says the absence of action in relation to fund concentration didn't disadvantage the trusts, and the trusts don't seek recompense on that basis but on the basis of a return of the charges paid. I accept on the evidence provided that CPL's failing wasn't the cause of financial loss that may have been suffered by the trusts. In my view fair and reasonable redress for the failings I've identified would be for CPL to refund to the trusts the ongoing service charges attributable to the period from the August 2022 review meeting onwards, until CPL stopped making those charges when the trusts moved to different advisers.

In saying this I don't overlook that the trusts plainly received some service in the period from the August 2022 meeting onwards, so I've thought carefully about whether it would be fair for CPL to retain payment for the lower level of service it did provide. But I don't think it would be because the trusts didn't want that level of service but the higher level they paid for. I'm persuaded that the manner in which CPL provided its service to the trusts did significantly reduce the utility to the trustees of that service from the August 2022 meeting onwards. This reinforces my view that it wouldn't be fair to deduct from the redress something for the service the trusts did receive in that period.

So to compensate the trusts for not providing to them an ongoing service of sufficient quality from the point of the August 2022 meeting onwards, I'm satisfied that it would be fair and reasonable for CPL to refund the charges it made for that service from August 2022 onwards (and that were attributable to that period).

I'm also satisfied that due to the shortcomings in the service, CPL did cause inconvenience

to the trustees. I've taken this into account in my award below.

Putting things right

Capital Professional Limited must refund to the trusts the charges paid by the trusts for Capital Professional Limited's service from August 2022 onwards.

Capital Professional Limited must pay simple interest on the refund at the gross rate of 8% per year from the date each charge was paid until the date the refund is paid.

Income tax may be payable on the interest awarded.

Capital Professional Limited must also pay the trusts' trustees £200 for inconvenience caused to them by its failings.

My final decision

For the reasons I've given and in light of all I've said above, I uphold this complaint.

Capital Professional Limited must put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask P (the trusts) to accept or reject my decision before 21 November 2024.

Richard Sheridan
Ombudsman