

## **The complaint**

Mr D and Mrs O have complained about the service they received from Capital Professional Limited ('Capital Professional'). This delayed the transfer of their portfolio, and they say the performance of their investments suffered because of that delay.

They would like the fees repaid to them.

## **What happened**

Mr D and Mrs O had received advice from Capital Professional about their pensions, ISAs and investments for 15 years. The investments were held on a third-party platform.

Mr D and Mrs O met with their adviser at Capital Professional on 2 March 2023, but they didn't receive any subsequent service. Their adviser had recommended moving to another financial business for their portfolio to be managed on a discretionary basis, but due diligence needed to take place first.

Mr D and Mrs O were informed their adviser had retired from Capital Professional. They didn't hear from their replacement adviser and were concerned about the due diligence that was to be carried out for their new financial business. They found that shares were sold on their accounts to fund the ongoing advice charges.

At the end of 2023/beginning of 2024 Mrs O and Mr D moved their portfolio to a different platform so they could manage the investments themselves. In the meantime, they raised their concerns with Capital Professional.

Capital Professional responded to Mr D and Mrs O's complaint. It said;

- After their financial adviser left, they met with their new adviser on 6 June 2023 to discuss pension and investment advice. A suitability report should have been sent with their adviser's recommendations.
- They were informed their adviser needed more information which they supplied but were advised there was a backlog.
- Mr D and Mrs O were still clients of Capital Professional but as they were leaving, they were told the suitability report didn't need to be issued. It apologised for this.
- As a suitability report wasn't issued a comparison couldn't take place about the performance of their investments.
- It offered to repay the fees Mr D and Mrs O had been charged from June 2023 onwards of £4,477.79 made up of £2,173.89 for Mrs O and £2,303.90 for Mr D.

Mr D and Mrs O told us they weren't willing to accept the offer. They questioned whether the fee repayment should be from the date of their last meeting, and they queried whether any performance comparison should be made to ascertain whether any compensation was due to them.

Our investigator who considered the complaint didn't think that Capital Professional had acted fairly. She said;

- Mr D and Mrs O didn't receive the expected reports after they met with Capital Professional's advisers on 2 March 2023 and 7 June 2023 which wasn't in dispute, but it was the refund of fees that needed addressing.
- The investigator didn't agree that the fees should be refunded from March 2023 as suggested by Mr D and Mrs O or June 2023 as proposed by Capital Professional. Fees were taken on 3 March and 11 April 2023. But a service was provided with the 2 March 2023 review however the subsequent report wasn't provided. As such it was April 2023 that should be the starting point for the fee refund.
- Some of Mr D and Mrs O's investments were sold to pay the monthly ongoing advice fees and they had asked Capital Professional if they could add cash instead, but this wasn't responded to until the meeting of 7 June when they were advised it wasn't possible. But the investigator hadn't seen any evidence that cash couldn't be added and as an ongoing service wasn't provided after April 2023, no charges should have been incurred and so no investments should have been sold.
- There was no evidence that ongoing management of Mr D and Mrs O's investment was part of the service agreement. The half year review wasn't carried out so she 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 Mr D and Mrs O's complaint point that they had lost out by not transferring their investments to a different provider. Despite this being a consideration, it hadn't been recommended by Capital Professional.
- To put the matter right the investigator said that Mr D and Mrs O should be paid £350 for the trouble they caused in not receiving the service they paid for as well as not being able to prevent their investments being sold to pay fees.
- Capital Professional should also reverse the sales made each month from the separate account to pay for the fees. If the investments that had been sold would be worth more at the time of the calculation the difference should be paid to Mr D and Mrs O in cash.

Capital Professional didn't respond to the investigator's assessment. Mr D and Mrs O spoke with the investigator and overall agreed with the outcome. They said that Capital Professional didn't respond to their request to send account valuations to the potential new financial adviser despite being reminded.

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

Mr D and Mrs O 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 Mr D and Mrs O's adviser – 'M' – said that as Mr D and Mrs O hadn't agreed to the suggested rebalancings of their portfolios, their portfolios were 'disconnected from the full service'. As such, he recommended a need to revisit an alternative solution. Further to this, Mr D and Mrs O say they were advised during the meeting of 2 March 2023 to consider moving their investments to a discretionary fund manager.

There is some discrepancy here as Mr D and Mrs O thought their adviser was recommending they use the services of another party – 'B' – but on 13 April 2023 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. A phone call was arranged. However, I can't see there was confirmation from the adviser that he was recommending B specifically but was looking at the options.

Capital Professional wrote to Mr D and Mrs O on 24 April to say their adviser – M – had decided to retire and their new adviser – 'N' – would be in touch. However, I note that M emailed them on 25 April 2023 to confirm he had 'submitted the request to my [Capital Professional] colleagues for preparation. This will provide full details of the investment solution and a cost comparison between your existing and new.' A new client agreement was attached for Mr D and Mrs O to complete.

Mr D emailed again on 28 April 2023 asking for details of the discretionary fund manager proposal, but Mr D and Mrs O didn't hear anything and called on 23 May 2023 explaining their disappointment. The points they raised weren't responded to. A meeting with N took place on 7 June 2023 and a follow up report was promised. Mr D and Mrs O chased for the report and were advised in July 2023 it was being finalised and Capital Professional were waiting some information from providers in order to complete the recommendation. But they still hadn't received any report and they raised their complaint about the lack of service.

I think it's clear here that Mr D and Mrs O had been advised that transferring their portfolio to a discretionary fund manager may be beneficial for them. They expected to receive a report once Capital Professional had carried out its due diligence as part

of the Bespoke Service, but this was never received despite the June 2023 meeting and them subsequently chasing for it. So, I do agree that Capital Professional failed to provide the service it had agreed to. It follows that I think this part of their complaint should be upheld.

After the 2 March 2023 review during which the possibility of investing in Venture Capital Trusts ('VCTs') for the year for Mr D were discussed, M provided his Investment Planning Report which gave advice about investing in VCTs. But I can't agree that after March 2023 Mr D and Mrs O received the service they were paying for. I accept that a meeting with N took place in June 2023 but no subsequent report or recommendations with any advice was provided.

Because of this I think the ongoing fees Mr D and Mrs O paid after March 2023, until they were able to remove their portfolio from Capital Professional, should be repaid to them.

#### Sales for fees

I can see that Mr D emailed M on 31 January 2023 as he had received statements saying shares had been sold 'as per my request'. He hadn't agreed to this. The adviser confirmed that the sales were made from each respective account if there wasn't enough cash on that account to pay the fees. Mr D emailed again on asking whether they should be given the choice about selling investments or being able to add cash.

Capital Professional didn't address this when raised in Mr D's email of 28 April 2023 until June 2023 when Mr D and Mrs O were told it wasn't possible to add cash. And I note that 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 Mr D and Mrs O wanted to do. And as I'm satisfied that Mr D and Mrs O didn't receive the service they were paying for after March 2023, and 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.

I can see on 13 April 2023 Mr D emailed M to ask whether it was still his recommendation to transfer their portfolio to B. He asked for confirmation and details of fees in order for them 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 and said 'this is particularly important as we are advised and proposed to move to [B]'.

However, no report was provided, and Mr D and Mrs O say they potentially incurred losses by not transferring their portfolio to B. And Mr D and Mrs O have said they couldn't move their portfolio without the assistance of Capital Professional as the platform used for their investments was for professionals only. But they eventually

were able to move to different businesses where they could manage their investments themselves.

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

But I do think that Mr D and Mrs O should receive a payment for the trouble and upset they were caused because of this. It's clear they wanted a 'solution' and they had been advised that a transfer to a discretionary fund manager might solve that, but Capital Professional needed to carry out its due diligence. Mr D and Mrs O were anxious to move forward on this point as evidenced by them chasing for the report. This delay clearly caused inconvenience.

And no doubt Mr D and Mrs O were upset when they saw their investments being sold, particularly when they had asked for an alternative – to be able to add cash – but were advised that none was available. So, I think an award of £350 is fair and reasonable in the circumstances and a fair reflection of the distress and inconvenience they suffered.

Mr D and Mrs O have questioned whether there should be any penalty for Capital Professional to deter them from operating like this in their own case and for others. But this service is not the regulator, and it's not our role to fine or punish firms. We only consider individual complaints on their own particular merits, and I think £350 is appropriate in this case.'

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. Mr D and Mrs O replied to say that they accepted my provisional decision but wanted to comment and make one further point;

- Capital Professional had said that as a suitability report wasn't issued a comparison couldn't take place about the performance of the investments. Mr D and Mrs O were told that before their adviser's departure he had prepared a report that only needed finalising, so thought Capital Professional's comment was just an excuse. In any event Mr D and Mrs O didn't believe comparison was relevant to the suitability report as they were two different things. The comparison was about what their portfolio would have been worth if it had been moved to the new platform as recommended by their adviser which would have incurred lower management and platform fees.
- The investigator had said there was no evidence that ongoing management of Mr D and Mrs O's investment was part of the service agreement, and it wasn't agreed that Capital Professional would manage the investments. Mr D and Mrs O disagreed with this and referred the 'The Service Provided' list. Capital Professional were managing their investments and their adviser regularly reviewed their portfolio and offered an annual meeting. Only on two occasions had Mr D and Mrs O disagreed with any recommendations made.

Mr D and Mrs O also made comments about another issue, but our investigator advised this would be a new complaint point and would need to be raised with Capital Professional before this service could consider it.

## **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.

With regard to comparison with the suitability report I concluded in my provisional decision that it wouldn't be fair for me to conclude that Mr D and Mrs O had suffered a loss because of a lack of report about a potential transfer. While Mr D and Mrs O say they were told that their previous adviser had prepared a report, ultimately this wasn't issued. And it wasn't known if the transfer to B would have been recommended and gone ahead. Even if that was assumed to have been the case, it can't be known how B would have managed the portfolio when received. So, on that basis I don't think a comparison would be possible. In any event Mr D and Mrs O didn't transfer their investments to B.

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 Mr D and Mrs O told us the regular advice and meetings they 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 Mr D and Mrs O 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 Mr D and Mrs O have now moved their accounts, it's not possible for Capital Professional to reinstate their portfolios 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 the sold investments for each of the accounts – ISA, pension etc – as at the date(s) Mr D and Mrs O's investments were transferred to their new provider.
- The value of those sold investments as at the date(s) of transfer should be paid to Mr D and Mrs O 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(s) of transfer.
- And because Mr D and Mrs O have been deprived of the money during this time, Capital Professional should add 8% simple interest from the date(s) of transfer to the date of settlement.
- Capital Professional should also pay Mr D and Mrs O £350 for the distress and inconvenience they were caused.

Mr D and Mrs O have fully subscribed to their ISAs for this financial year. But I have borne in mind the amounts are relatively small and I'm satisfied Mr D and Mrs O are in the position to manage any addition of the refund to their ISAs over the coming years.

The compensation amounts for the pensions should, if possible, be paid into Mr D and Mrs O's pension plans. The payments should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plans if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications – which I understand might be the case for Mr D – it should be paid directly to Mr D as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid.

If Mr D has remaining tax-free cash entitlement, 25% of the loss would be tax-free and 75% would have been taxed according to their likely income tax rate in retirement – presumed to be 20%. So, making a notional reduction of 15% overall from the loss adequately reflects this.

### **My final decision**

For the reasons given, I partially uphold Mr D and Mrs O's complaint about Capital Professional Limited and the matter should be put right as outlined above.

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

Catherine Langley  
**Ombudsman**