complaint

Mr N has complained that he believed Arch Financial Planning Limited ("Arch") had arranged for capital he had inherited from his late father to be invested in a cash ISA for the tax year 2011/2012. As it was, Arch had set up a stocks and shares ISA for Mr N to utilise his ISA allowance of £10,680 which was held in "cash" earning no return pending further discussion as to where Mr N wished to invest this capital within the ISA.

In the event, no further discussions took place between Mr N and the Arch adviser until his new adviser notified him in March 2013 that his ISA allowance for tax year 2011/2012 had earned no return. Mr N had continued to believe that this capital had been invested in a cash ISA since 5 April 2012 and has claimed that this has cost him £2,650 in the return he might otherwise have received had this capital sum been invested.

Also, Mr N had agreed to pay Arch a fee of £2,000 for advice it had given his late father to transfer his capital to an investment "platform", which was not wholly completed due to his father's death. Mr N claims that he completed the transfer of the outstanding capital on behalf of his late father and has requested Arch to refund 50% of its fee to him.

background

Mr N's complaint was investigated by one of our adjudicators, who concluded that it should not be upheld.

Briefly, he found that, in October 2010, Mr N's father requested advice from Arch to consolidate his capital investments and he was advised to hold his wealth within an investment platform which provided tax-efficient returns. Although Arch had arranged for more than £110,000 of his capital to be transferred to this new service, the remaining transactions had not been completed when Mr N's father died. Mr N says that he completed the outstanding transactions on behalf of his late father without any assistance from Arch.

On 10 February 2011, Mr N signed a "client agreement" which outlined typical fees charged by Arch based on the value of the portfolio being managed. Mr N's father then died in April 2011 and, in May 2011, Arch confirmed to Mr N that a maximum fee of £2,000 was appropriate to arrange the transfer of funds to the new platform but not for the on-going implementation and investment advice necessary to realign the portfolio which had since been split equally between Mr N and his brother.

Arch confirmed to Mr N on 2 April 2012 that the transfer of funds from his late father to the ISA account under the new platform for Mr N had not yet been completed. However, the investment provider confirmed that, on 5 April 2012, capital of £8,980 had been transferred from Mr N's general savings account to a Stock and Shares ISA which he had applied for in March 2012 which, together with a cash transfer from Mr N of £1,700 utilised his ISA allowance of £10,680 for tax year 2011/2012.

Arch then confirmed that its adviser would contact Mr N to advise how this capital ought to be invested, to consider his ISA allowance for tax year 2012/2013 and any regular contributions he wished to make to the investment platform. This message was conveyed to Mr N in two further emails from Arch in May and July 2012. It appears that no further contact took place between Arch and Mr N until March 2013 when he complained through his new adviser.

In response, Mr N disagreed with the adjudicator's assessment and said that:

- he was not aware that capital could be held in "cash" earning no return in both a general savings and a stocks and shares ISA. He genuinely believed that he had transferred £10,680 to a cash ISA for the tax year 2011/21012;

- when Arch emailed him on 5 April 23012 to confirm that the investment provider had processed his ISA application, he believed that his capital had been invested in a Cash ISA, as his late father had held capital in a Cash ISA. He did not appreciate that his capital had been transferred to a cash fund that earned no return;

- his attitude to risk was different to that of his late father and he expected to be contacted to receive advice. That he was not contacted led him to believe that his capital was already invested and not just "sitting" in a cash fund. Arch did not expressly warn him that the capital within his stocks and shares ISA was "sat" in cash and had not been invested;

- the emails he received from Arch in May and July 2012 indicate that it was continuing to manage his financial affairs. He did not appoint another adviser until November 2012.

As no agreement could be reached in this complaint, it has been passed to me for review.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

My understanding is that the fee Mr N was charged by Arch for arranging the transfer of capital on behalf of his late father to the new investment "platform" was consistent with the amount of capital of approximately £110,000 it had already arranged to transfer to the new investment "platform". According to the scale of charges found in the "Financial Planning Report" Arch carried out for Mr N's late father in October 2010, a fee of £2,000 was due for dealing and managing capital of more than £100,000.

Arch did confirm to Mr N in January 2012 that this fee would be taken from the value of his late father's accounts but, as he died before all the transfers and re-registrations were completed, this fee had not yet been taken. This does not mean that the fee was not due and, it is evident that Arch continued to work on the remaining capital amounts held by Mr N's late father after he died.

On balance, therefore, I am persuaded that Arch had "earned" the fee of £2,000 it disclosed to Mr N's late father in October 2010 and which Mr N himself later agreed to pay by deduction from the capital sums transferred from his late father's accounts.

With regard to the transfer of funds from his late father's portfolio, Arch had notified Mr N in May 2011 that all capital held by his late father in ISAs reverted to non-ISA status and that all interest, dividend income and capital gains have to be disclosed from the date of death to the date Probate was granted. My understanding is that probate was granted in January 2012, whereupon Arch arranged for a similar investment platform to be set up for Mr N to which his share of funds from his late father's accounts could be transferred.

As part of this process, Mr N completed an application in March 2012 to the investment platform provider to set up a general savings account and *"a stocks and shares ISA for the tax year 2011/2012 and each subsequent year until further notice."* The subsequent series of emails between Arch and Mr N confirmed that capital of £10,680 was transferred to this ISA by 5 April 2012.

However, this transfer was made to utilise Mr N's ISA allowance of for tax year 2011/2012 so that the amount of £10,680 could receive the tax benefits an ISA provided whenever Mr N decided how this capital sum would be invested. Although Arch does not appear to have expressly stated that the funds were held in cash within the stocks and shares ISA, I cannot see how Mr N would have believed that his capital was held in a cash ISA when it is evident that he had applied for a stocks and shares ISA. Subsequent emails from Arch confirmed that its adviser would contact Mr N to decide how this capital should be invested within the ISA. It is evident that neither the Arch adviser nor Mr N contacted each other to arrange such a meeting. In the meantime, Mr N would have received periodic statements for the ISA which confirmed that his capital was held in cash and the return it was receiving.

While I accept that Arch does not appear to have contacted Mr N after April 2012 except to confirm that its adviser would be contacting him, it was evident from the emails in May and July 2012 that Mr N had to make a decision as to how the capital of £10,680 should be invested. He needed to have discussed this with the adviser who would have been required to carry out a fact-finding process to establish, among other things, Mr N's attitude to investment risk before making an investment recommendation. Therefore, I am not persuaded that Mr N believed that his capital was already being invested and receiving a (tax-free) return since 5 April 2012.

I agree with Mr N that Arch could not have imagined that it was no longer acting as his adviser since April 2012. It also knew that he needed to receive advice as to how his capital of £10,680 should be invested. On the other hand, I do not accept that Mr N believed that he did not require advice (because he mistakenly thought his capital had already been invested in a cash ISA). He could have contacted Arch, not least to confirm whether he wished to utilise his ISA allowance for tax year 2012/2013.

Additionally, I am not persuaded how Mr N believes he has lost a return on £10,680 of £2,650, which equates to an annual return of approximately 24%. There is no evidence which indicates how Mr N would have invested this capital sum which could conceivably have provided such an exceptional return or to establish the extent of any financial loss he may have suffered.

I accept that the Arch adviser ought to have contacted Mr N since April 2012 to explain why he needed to take further advice and to emphasise that the capital within his stocks and shares ISA was held in cash. Equally, Mr N should have realised that he needed to decide how his capital ought to have been invested and could have contacted the adviser himself.

In addition, there is no evidence which indicates to me *how* Mr N would have invested this capital since April 2012 to know what financial loss, if any, he has made by not receiving advice. Mr N has not indicated why he believes he would have received a return on his capital of £2,650 since April 2012. Indeed, without knowing which investment fund or funds he would have chosen within his stocks and shares ISA, it is conceivable that he may have suffered a capital loss since April 2012.

my final decision

My final decision is that I do not uphold Mr N's complaint.

Kim Davenport
ombudsman