

The complaint

Mr and Mrs F, as trustees of the D S Will Trust, complain that Chase de Vere Independent Financial Advisers limited (CDV) delayed investment of the trust fund.

What happened

Mr and Mrs F had a long-standing relationship with their adviser from CDV. In 2017, amongst other requests for personal financial advice, they asked for a suitable investment to put the trust fund monies into for the benefit of their children.

In the following two years, Mr and Mrs F continued to ask for suitable investment opportunities for the trust fund. CDV explained over the years that it was best sat in cash whilst there was some volatility in the markets. In July 2019, CDV withdrew a recommendation it had made shortly before. Eventually in October 2019 CDV told Mr and Mrs F to speak to an adviser elsewhere – they did so and the funds were invested shortly after.

Mr and Mrs F complained that their CDV adviser delayed investment of the trust funds. They repeatedly asked for advice and were told there weren't any suitable vehicles for the investment but have since found out that wasn't the case. They've asked for the loss of growth over that time on the funds.

CDV upheld their complaint. It said that the adviser ought to have taken action sooner and offered £3,600 compensation for the inconvenience.

I issued my provisional decision on 13 April 2023. In this I explained that I intended to uphold Mr and Mrs F's complaint. For clarity, my reasoning from this decision is copied below and forms part of this decision.

"What I've provisionally 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've reached a different outcome to our Investigator. I intend to uphold this complaint and ask CDV to calculate financial loss. I'll explain why.

The evidence available shows Mr and Mrs F asked for advice relating to the trust funds in September 2017. The funds stood at £192,000 at this point. It appears that the CDV adviser continued to push back discussion of the trust fund investment to later meetings. He talks about volatility surrounding Brexit. Mr and Mrs F continued to chase for a recommendation.

In 2018, after chasing again for a recommendation, CDV told Mr and Mrs F that it's best the funds remain in cash and pushed the discussion back again. Mr and Mrs F confirmed they would wait for his proposals. The proposal didn't come. When reading the emails it's clear that Mr and Mrs F are frustrated – they wanted to invest the funds in the medium term for their children to benefit and the funds remained uninvested. I've thought about whether, at this point, Mr and Mrs F ought to have looked elsewhere. But I'm mindful that they have a long-standing relationship with their CDV adviser and that he was effectively advising them not to invest the funds. I can't see any reason as to why CDV advised this when it was very clear Mr and Mrs F were looking to invest for growth, but I don't think it's unreasonable that they followed CDV's advice.

In 2019 CDV advised Mr and Mrs F to invest the funds in an offshore bond. Mr and Mrs F got the relevant advice from their solicitor quickly about the trust aspect and asked to go ahead. However, shortly after – in July 2019 – their CDV adviser said he wasn't comfortable with how the platform worked and said he would look at other options. The adviser told Mr and Mrs F there was an issue around what was available to invest trust monies in but I've not seen any evidence that was the case. Indeed CDV has later confirmed that there were options available. Essentially Mr and Mrs F asked for advice to invest trust monies and I've seen nothing to justify CDV's lack of advice in this respect. Nor any sufficient reasoning to keep that sum of money uninvested for so long.

In October 2019 CDV mentioned other potential platforms but advised Mr and Mrs F to find a different adviser. They then did and the funds were invested. In my view, this ought to have been done a lot earlier. And I can see that CDV has agreed with that in its final response letter. I'm not persuaded that CDV's reasons for not investing the funds over the two years were reasonable in the circumstances when it was very clear Mr and Mrs F wanted the funds to be invested rather than sat in cash.

I've noted that the funds – which later increased in 2019 by an additional £90,000 – were invested in a high-risk discretionary fund management portfolio with a long-term strategy. And that Mr and Mrs F's new adviser believes they lost out on around £50,000 growth. Given they wanted to invest through CDV, I don't think it's likely the funds would've been placed in the same type of portfolio. I'm also mindful that the CDV adviser talked about market volatility and things being too risky. There's also notes from conversations relating to the risks of investing in commercial property. This has led me to conclude that although I do think the funds would've been invested in a discretionary managed portfolio, I think it's likely the risk associated with this would be lower than the high risk long term strategy Mr and Mrs F have since taken.

I think the most pragmatic way to determine the loss caused by CDV's failings is to compare the performance of the funds that were sat in a cash savings account to that of a medium risk benchmark – details of this I've set out below. The dates I've used for the redress below relate to when I think CDV ought reasonably to have been able to invest the funds – around six weeks after the request for advice. The additional £90,000 ought to have been invested when available into the same investment.

I'm mindful that CDV has offered £3,600 compensation. As I think CDV needs to calculate the loss of growth on the funds, it wouldn't be reasonable for it to pay the additional £3,600 compensation. If this has already been paid it should be deducted from the overall loss. I do note the frustration Mr and Mrs F were caused when trying to invest the trust funds. The continual chasing and being told there weren't suitable investments available when the opposite was true would've caused inconvenience and frustration. For this, I intend to direct CDV to pay £300 compensation in addition to the financial loss."

I then set out in detail how the redress should be calculated in this complaint.

Responses to provisional decision

Following my provisional decision CDV made some comments around the redress. This led to me sending out amended redress to both parties for comments. CDV then made the following comments:

- CDV believed the adviser was looking to act in the trustees' best interests and defer a large single investment when the markets had been volatile following the Brexit vote.
- CDV would require details of the trust's new discretionary fund management portfolio from inception to date with a transaction and performance history to calculate the redress.

Mr and Mrs F made the following comments:

- The start date for redress – to determine when the funds would've been invested – shouldn't be 1 November 2017 as this is too late. They originally asked for advice on 11 May 2017 in an email and the first distribution of the funds was placed into the savings account on 2 June 2017. They therefore believe the right date for investment redress should be 1 July 2017.
- They have requested the information to show how much interest was paid within the savings account and information from their fund manager to demonstrate performance.

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'd explained in my provisional decision – extract above which forms part of this decision – why I felt CDV had made an error in not providing advice to invest the trust funds, so my decision remains the same on this point.

I've thought about Mr and Mrs F's point around the start date of the investment. And I appreciate they said asked for advice earlier than the September 2017 meeting but didn't receive it. However, I think it's reasonable that any advice was given during a review meeting after the funds were available to invest – which in this case took place in September 2017.

I don't think it would be fair to expect CDV to have given advice earlier than this point in response to numerous emails particularly as the initial distribution of the funds to be invested wasn't until June 2017. As such, my decision remains the same in terms of when I think these funds ought to have been invested – which allows time for the advice, legal advice and paperwork to be completed after that review meeting took place in September 2017.

I'm upholding this complaint for the same reasons as set out in my provisional decision. It is worth noting that CDV will need the details we have requested from Mr and Mrs F to determine the fair level of compensation so we expect these to be provided.

Putting things right

To compensate the trust fairly, CDV must:

- Compare the performance of the trust's funds in the savings account with that of the benchmark shown below and determine the difference between the *fair value* and the *actual value* of the investment. If the *actual value* is greater than the *fair value*, no compensation is payable.
- If there is a loss, CDV must then determine what that amount would now be worth had it been invested where the funds now are. So it should work out, with reference to the actual portfolio the trust funds are in, what the money would be worth at the date of decision had it been invested with the rest of the funds in December 2019.
- CDV should also add any interest set out below to the compensation payable.
- Pay the trust £300 for the frustration caused by having to chase for a suitable recommendation.

Income tax may be payable on any interest awarded.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
D S Will Trust funds - £192,000	Still exists and liquid	FTSE UK Private Investors Income Total Return Index	Date it ought to have been invested – 1 November 2017	Date of investment – December 2019	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance and current investment details)
D S Will Trust funds - £90,000	Still exists and liquid	FTSE UK Private Investors Income Total Return Index	Date it was available – 9 April 2019	Date of investment – December 2019	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance and current investment details)

Actual value

This means the actual amount payable from the investment at the end date.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

Any additional sum that the trustees paid into the investment should be added to the *fair value* calculation at the point it was actually paid in.

Why is this remedy suitable?

I have chosen this method of compensation because:

- The trustees wanted Capital growth and were willing to accept some investment risk.
- The FTSE UK Private Investors Income **Total Return** index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.

- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given the trust's circumstances and risk attitude.
- Although the trustees invested with a different firm in a high-risk strategy, this redress is based on the funds being invested by CDV which I think would likely be different to where the funds are now invested.

My final decision

For the reasons I've explained, I uphold this complaint. Chase de Vere Independent Financial Advisers limited must calculate and pay redress in line with the above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs F as trustees of the D S Will Trust to accept or reject my decision before 13 June 2023.

Charlotte Wilson
Ombudsman