

complaint

Mr and Mrs A complained about a number of issues with regards to Positive Solutions (Financial Services) Limited's handling of their affairs, as bullet pointed below:

- Allowing Mr A's life cover with Provider A to lapse
- The recommendation of Provider B as a suitable Self Invested Personal Pension (SIPP) provider
- The SIPP fund attracting a nominal amount of interest
- Not overseeing and providing advice with regards to the acquisition of a commercial property within the new SIPP.
- Recommending a trust plan that was not needed as the property was automatically placed in trust

background to complaint

Our adjudicator issued an adjudication to both parties, in which he partially upheld the complaint. In summary he said for each point:

allowing Mr A's Life Cover with Provider A to lapse

That Positive Solutions did make an error in completing a full transfer of Mr A's Provider A policy, causing the life cover to cease when it was clear that A wished to keep it in place. However, Positive Solutions did arrange cheaper cover and the adjudicator did not believe a financial loss had occurred. However, Mr A was left without life cover for a period of time and this would have caused him distress and inconvenience. The adjudicator stated that £100 would be an appropriate award

the recommendation of Provider B as a suitable Self Invested Personal Pension (SIPP) provider

He could not conclude that Provider B was not a suitable SIPP provider and that Positive Solutions could not be held responsible for any of Provider B's alleged failings.

the SIPP fund attracting a nominal amount of interest

That Positive Solutions should have found an appropriate bank or building society account that would accept trustee held investments. The fund would then have been readily accessible and also attract a small level of interest. He concluded that for the period that the money was held in deposit, Positive Solutions should redress the loss of interest at Bank of England base rate plus 1%, minus the £49.94 received

not overseeing and providing advice with regards to the acquisition of a commercial property within the new SIPP.

That he could not independently satisfy himself of what was said in the meetings between Mr A and Positive Solutions. However, the charges were applied in line with the Client Agreement document. In this document it said the charges would be applied as specified and no further reviews or ongoing advice would be given unless documented in writing. With no evidence that it was agreed in writing that ongoing advice would be given, the adjudicator concluded that the charges had been applied in conjunction with what was agreed in writing.

recommending a trust plan that was not needed as the property was automatically placed in trust

Concluded that no financial loss had occurred because of this issue and therefore investigating it further would not be productive. As the end result will remain the same.

The adjudicator concluded that Positive Solutions should pay £100 for the distress and inconvenience caused with regards to the life cover and loss of interest with regards to the fund being held in cash. However, he stated that the overall recommendation was not unsuitable and the charging structure had been agreed at outset and adhered to the 'Our Client Agreement' document.

responses to the adjudicator

Mr A replied and said that:

- he felt the compensation for the lapsing life cover was farcical and didn't even cover the time he spent chasing Positive Solutions.
- the life cover was not the same as was originally in place as there was no automatic right to convert the policy for long life cover.
- that 1% above Bank of England base rate was a joke and wished it to be reviewed.
- the ongoing charges should be refunded and that Positive Solutions had said that they would assist him with purchasing of the commercial building and this is what he was charged for. He had a witness but the witness would not come forward.
- Positive Solutions recommended Provider B based on their ability to handle SIPP administration. Positive Solutions wrongly suggested putting the building into trust when it would automatically be placed in trust in any event, shows that they did not know the product. Therefore it had taken a fee for a product it didn't understand and the fee should be reimbursed.

Positive Solutions replied to say that:

- they were not at fault for the lapsing of the life cover but agreed that it may have caused some undue distress and inconvenience and were prepared to pay £100.
- they do not believe holding the money in a deposit fund attracting no interest was an error, because it was agreed that the money was held in a 'cash fund' so it was immediately available.
- the fees paid were to cover all the work in research and implementation of the pension transfers into an environment where they could seek a commercial property for investment. They at no stage suggested they would act as a third party in the commercial property purchase.

The adjudicator subsequently requested more information for the original and current life cover policies and compared them. After looking at the schedules and the terms & conditions for both policies, his opinion was unchanged, the new policy was a suitable replacement.

Mr A, questioned whether the retirement date was the same, he thought the original life cover expired at 65 and the new at 60. But after discussion with the adjudicator he accepted that he had thought the original pension plan and life cover was set to 65 but agreed the schedule does say 60.

Mr A reiterated that Positive Solutions had made errors and denied them. He believes Positive Solutions have been negligent and all his fees should be refunded with a minimum 5% interest.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. In doing so, I have come to the same conclusions as the adjudicator and for the same reasons.

allowing Mr A's Life Cover with Provider A to lapse

Provider A wrote to Positive Solutions and explained what they needed to do to keep Mr A's life cover running. Positive Solutions then submitted paperwork for a full transfer, Positive Solutions claim they give instructions for 99% of the fund to be transferred but that this was over the telephone and there is no record of this.

Positive Solutions oversaw a full transfer when a partial one was needed, therefore Positive Solutions did not ensure that the life cover remained in place as Mr A had instructed.

Positive Solutions subsequently found Mr A new life cover which was cheaper than the original. Mr A says that this cover is not as good, because it does not allow automatic renewal at the end of its term. However, I do not think the renewal available on the now lapsed policy was a valuable benefit because the premiums could be set at any price and there is no guarantee that they would be any better than life cover offered by other providers at the renewal date. It had to be re-underwritten and there was also no guarantee that it would sanction the renewal.

The life cover for both plans is/was set to age 60 and in the cover that has replaced the original is cheaper and a suitable replacement.

Positive Solutions was at fault for the life cover ceasing, however it has now rectified this situation. I do recognise that being left without life cover for three months was distressing for Mr and Mrs A and therefore I agree that Positive Solutions should pay £100 to Mr and Mrs A for the distress and inconvenience caused.

Mr A has said that this award is far too low but I cannot identify any loss or inconvenience, other than those three months where he was left without cover. I consider that £100 is appropriate bearing in mind such payments are usually modest.

the recommendation of Provider B as a suitable Self Invested Personal Pension (SIPP) provider

Positive Solutions recommended Provider B on the basis that its SIPP was a suitable vehicle for Mr and Mrs A's plans to purchase a commercial property. Subsequently Mr and Mrs A have had a number of problems with Provider B and the purchase of the property. Provider B has paid Mr and Mrs A compensation for its errors.

Provider B is an established provider of the SIPP product and Positive Solutions could not have foreseen the problems that occurred nor be held accountable for any errors on Provider B's behalf.

Therefore, I cannot say that Positive Solutions made an error in recommending Provider B.

the SIPP fund attracting a nominal amount of interest

Mr and Mrs A transferred to Provider B's SIPP to buy a commercial property, however, at this time a specific property had not been earmarked. There appears to be no record of a discussion at the time with regards to the interest to be applied but Positive Solutions documentation states that 'some interest' was stated.

Mr A argues that the adjudicators suggested level of interest was 'a joke' and he could get far better himself. However the funds needed to be readily accessible. High interest accounts rarely allow immediate withdrawal of funds with the interest accrued intact.

As no property had been earmarked at the time, there was an undetermined amount of time that would pass before the property purchase was made. However, the funds would need to be readily accessible once a property was earmarked, so a high interest account would not be suitable. However, an account accruing some interest was stated and I consider that this is what should have happened.

It is reasonable to say that a fund paying Bank of England base rate +1% would have been available, with the opportunity to access funds at short notice, and I consider this a reasonable amount of interest.

not overseeing and providing advice with regards to the acquisition of a commercial property within the new SIPP.

Positive Solutions carried out services that were in line with what was stated on the 'Our Client Agreement' document that states what Positive Solutions will offer. This document also explains how payment for its services would be made and Mr and Mrs A were charged in line with this document.

The document also said that they will not provide ongoing advice or regular reviews unless this was agreed in writing. I have seen nothing to suggest this was the case. The fees that Mr and Mrs A paid were for the recommendation and implementation of the transfer of funds from Provider A into Provider B's SIPP.

Mr A says that Positive Solutions said that the fees were for the work to be done in actually buying the commercial property through the SIPP but when he contacted Positive Solutions it said to contact Provider B for this.

The documentation does show that Positive Solutions provided the services it outlined in its client agreement. Although Mr A says that the adviser told him that he would provide additional services, I attach more weight to the contemporaneous documentary evidence. I therefore conclude that the adviser had not offered to provide additional services from the available evidence.

Mr A wants the fees paid to be refunded but Positive Solutions have provided the services that were agreed in writing. I have no other evidence other than Mr A's testimony to say that Positive Solutions had said they would continue to assist in the purchase of the property. And Positive Solutions reject that this was said.

The written evidence supports Positive Solutions in this aspect and I place more weight on the written evidence when I have two different testimonies of what happened. Mr A's claims aren't substantiated by the evidence and it could be that a misunderstanding has occurred as I do not consider that Mr A is being dishonest.

recommending a trust plan that was not needed as the property was automatically placed in trust

Mr A has said that Positive Solutions recommended that the property be placed in trust despite the fact that it was automatically placed in trust by Provider B. He says this shows that Positive Solutions did not understand the product and therefore the fees paid should be reimbursed.

Positive Solutions recommended a SIPP because Mr and Mrs A wanted to buy a property using a pension. A SIPP is a suitable product to do this through and therefore I consider that the recommendation to transfer was suitable for Mr and Mrs A's circumstances.

Positive Solutions may have recommended that it be placed in trust and may not have realised that this had already been done; however, I am not persuaded that this has caused Mr and Mrs A any financial loss.

Positive Solutions (Financial Services) Limited recommended a product that I consider was suitable for Mr and Mrs A's circumstances at the time of advice. It charged fees in line with what was documented and provide the documented services agreed upon. I cannot conclude that it told Mr A that it would provide ongoing advice and I would expect Provider B to have carried out the necessary work for the property purchase in its SIPP.

However, Positive Solutions (Financial Services) Limited caused Mr A's life cover to cease with Provider B. It should also have found an account accruing interest whilst the funds were held awaiting to be used for the property purchase.

my decision

I uphold this complaint in part.

Positive Solutions (Financial Services) Limited should pay Mr and Mrs A £100 for the distress and inconvenience it caused by allowing the life cover to cease.

Positive Solutions (Financial Services) Limited should also pay interest at Bank of England base rate +1% from the date of the transfer to Provider B until the funds were allocated for the property purchase. This figure should be minus any interest already received. The interest should be added to Mr and Mrs A's SIPP account.

This interest award should be increased by the percentage difference in performance from the date the funds were released from the fund (to be used to purchase the property) until the date that the interest is added to the SIPP. This is so that the award represents that the interest amount would have been invested within the SIPP during this time.

Roy Milne
ombudsman