

complaint

Mrs D has complained that Positive Solutions (Financial Services) Limited ("Positive Solutions") failed to give the service she expected. The adviser did not move her funds into more suitable investments at the appropriate time.

background

Mrs D's husband has brought an identical complaint which I have dealt with separately.

But whilst I have considered each complaint on its specific merits, I trust Mrs D will understand that their similarity means my decisions are commensurately similar.

In 2008 following advice from Positive Solutions Mrs D transferred her pension. The funds were invested in a Deposit Fund. Mrs D understood this to be a temporary measure until the market was more stable.

Mrs D said that, in 2008/09, she completed an 'Online Fund Switching Authority'. Mrs D says this gave consent to the adviser exercising control of Mrs D's funds, including fund switching.

Mrs D has said that she received annual statements showing the funds were falling in value. Following receipt of the 2014 statement, Mrs D complained to Positive Solutions.

It responded and said it was satisfied its adviser had made sufficient attempts to contact Mrs D to review her pension arrangements. Further, it said the adviser did this despite not being obliged to provide Mrs D with reviews.

Page two of Positive Solutions 'Terms of Business' document states:

'When we have arranged any contract or contracts for which you have given us instructions we will not give you any further advice unless you request it, although we will be glad to advise you at any time if you ask us to do so.'

Positive Solutions also said the fund switching authority didn't mean that Mrs D was opted out of making future decisions about which funds to invest in.

Mrs D said that her business relies on telephone calls and so if the adviser called she would have been notified of this. She said she was always available before 11am and so disputed that the adviser had difficulty in contacting her. Mrs D added that the trail commission demonstrated her funds were – or should have been – managed by Positive Solutions.

The matter was then referred to this service. An adjudicator concluded that Positive Solutions were not contractually obliged to provide Mrs D with ongoing advice. She explained the trail commission stemmed from the initial advice; it was not payment to manage Mrs D's funds in the future.

Mrs D confirmed that she received annual pension statements. These showed the fund was falling in value. But Mrs D submits she was told this would happen but to allow it to develop. She also said that she kept Positive Solutions updated when changing address.

But the adjudicator said that Mrs D ought to have requested a review of her pension by Positive Solutions following receipt of the annual statements.

Mrs D did not agree. She said:

- There was a verbal contract to give further advice.
- To look at page three of the terms of business letter in particular points 1, 2 and 3.

The adjudicator reiterated there was no evidence of the conversations between the adviser and Mrs D. But she said that the terms of business letter provided showed there was no obligation to provide further advice.

Agreement was not reached. So the matter has been referred to me.

Positive Solutions made no further submissions. Mrs D provided a copy of a letter sent to her by Positive Solutions in March 2013. This invited Mrs D to arrange a meeting with an adviser for a review. Mrs D says this shows Positive Solutions ought to have contacted her but failed to do so.

my findings

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

There is limited information available to support either parties' submissions. In these circumstances, I base my decision on the balance of probability. In other words, what I consider is most likely to have – or should have – happened.

Mrs D relies on the '*online fund switching authority*' to say that this gave Positive Solutions discretion to manage her funds in the future, without her involvement in any investment decision. Its only purpose was to facilitate active management of her funds.

It is unfortunate that neither party has been able to provide a copy of that document. But I am not persuaded it was effectively a discretionary management agreement. In my opinion, it is more likely that it was a 'once off' authority for Positive Solutions to invest Mrs D's funds once it *and* she had decided to move the funds away from the temporary deposit account.

I say Positive Solutions *and* Mrs D because the terms of business letter clearly set out that it would only give further advice on the initiative of Mrs D. I have not been given any persuasive evidence that Mrs D attempted to contact Positive Solutions in order to discuss switching her funds away from the Deposit account.

I also note that Mrs D says she received annual statements. These showed that both the fund was falling in value and specified that Mrs D's funds remained invested in a deposit account. If Mrs D was concerned about this, with the clear implication that her funds were not being actively managed by Positive Solutions, then I would reasonably have expected Mrs D to have queried this with Positive Solutions. Irrespective of this, it would also be the case given that Mrs D says that there was a verbal contract in place for her funds to be actively managed. I have not been given persuasive evidence to show that Mrs D did this.

I also agree with the adjudicator that the retention of trail commission by Positive Solutions reflected the initial advice. It cannot reasonably be taken to mean, as Mrs D contends, that

there was then an obligation on Positive Solutions to actively manage Mrs D's funds in the absence of specific instructions from her or a comprehensive discretionary agreement.

I understand Mrs D will be disappointed with my decision. But for the reasons set out above, I do not think it would be fair or reasonable to hold Positive Solutions to account for Mrs D's funds remaining invested in a deposit account.

my final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs D to accept or reject my decision before 15 February 2016.

Terry Connor
ombudsman