

## **The complaint**

Miss H complains that Sense Network Limited failed to review her investments and ensure they remained suitable for her; failed to recommend utilising her annual ISA allowance; and that onshore bonds weren't suitable for her.

The complaint is brought on her behalf by her court-appointed deputy who I'll refer to as Mr L. Mr L says Sense Network should refund its fees and compensate Miss H for the failure to utilise her annual ISA allowance.

The investment client agreement was with Five Wealth Limited who are an appointed representative of Sense Network Limited. As such, Sense Network is responsible for this complaint. However, as the agreement was with Five Wealth, I will refer to it, rather than Sense Network, as the business in the remainder of my decision.

## **What happened**

In 2012 Miss H received a monetary court award and, due to her mental capacity, a deputy was appointed by the Court of Protection to deal with her property and affairs on her behalf. The deputy sought financial advice for Miss H from an independent financial advisor. That business provided initial advice, and ongoing advice, until around September 2016, when the advisor moved to work for Five Wealth and the deputy signed an agreement with Five Wealth on Miss H's behalf. This complaint is about the service provided by Five Wealth from September 2016 until March 2021 when it was responsible for providing advice about Miss H's investments.

When Miss H's investments were transferred to it, she held two investment bonds, which provided an annual income of £30,000, and a portfolio of unit trusts held on a third-party platform.

Five Wealth charged on-going fees of 0.5% per year. It agreed to review the investments on at least an annual basis to ensure they still met Miss H's requirements.

In September 2020 Mr L was appointed as Miss H's new deputy. Having reviewed her finances, he complained about the advice she was given. In summary he complained that:

- The tax treatment of the investment bonds made them unsuitable for Miss H. And she was the sole life assured which wasn't appropriate.
- The attitude to risk wasn't properly assessed – the deputy's attitude was assessed rather than Miss H's. And the level of risk wasn't reviewed.
- The investment was too high risk. In 2021 around 64% of the investment was exposed to equities.
- Five Wealth failed to recommend Miss H invest in an ISA.
- There was little or no communication from Five Wealth and a lack of changes to the investments.

Five Wealth said it wasn't responsible for the original advice, but that it actively engaged with the client portfolio, providing annual reviews, and recommending adjustments as required. It said it made annual recommendations to utilise Miss H's ISA allowance. The 2018/19 ISA allowance wasn't used because the deputy didn't pay the money into the ISA account. Five Wealth said it tried to contact the deputy during 2019 and 2020 but didn't receive a response.

Our investigator didn't recommend that the complaint should be upheld. He thought the attitude to risk was kept under review, and that a rebalance of the investments was recommended when the investment risk profile was assessed as higher than the agreed approach. He said reviews were carried out six-monthly and that ISA recommendations were made annually. He couldn't conclude that the investment bonds were unsuitable for Miss H.

Mr L didn't agree. He said, in summary, that:

- The investment bonds, which deferred an income tax liability, weren't suitable for a non-taxpayer. There were numerous other products that would have achieved the same objective, without the tax liability.
- The life assured on the bonds was Miss H's alone, meaning a potentially significant tax liability would become a liability of her estate, with no opportunity of mitigation.
- Miss H missed out on the opportunity of growth within a tax-free ISA environment.

### **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.

Firstly, I'm aware that I've summarised this complaint in far less detail than the parties and in my own words. There is a considerable amount of information here but I'm not going to respond to every single point made. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome. In particular, I am not going to detail each review that took place or comment on each of the individual recommendations made during 2016 to 2021. Instead, I will comment on whether I think Five Wealth has fulfilled its agreed obligations overall.

Having considered everything, I find I have come to the same conclusion as the investigator for the following reasons:

In July 2016, Five Wealth undertook an initial review, including assessing the risk profile. The attitude to risk questionnaire which was completed was specifically for clients where a deputy was appointed. It said:

*"Before making a recommendation it is incumbent on our Firm to validate the level of risk the deputy is willing to take on the clients behalf, taking into account risk appetite and capacity for loss.*

*This should be read as the risk the client is willing to take and NOT the deputy personally..."*

I'm satisfied it was made reasonably clear that the assessment was for the deputy's attitude to risk for Miss H's investments, rather than the deputy's personal attitude to risk.

The attitude to risk was assessed as “Low end of moderate”, or 5 out of 10. This doesn’t seem inappropriate in the circumstances.

The last annual review with the previous business was carried out in January 2016. So, whilst a review was carried out in July 2016, the more comprehensive annual review took place in January 2017. During the review meeting with the deputy, Five Wealth highlighted that the portfolio’s exposure to risk was 8 out of 10 which was higher than the agreed risk profile. But the deputy was comfortable with that level of risk. He said Miss H’s other assets – a relatively large bank account balance and a property, should be taken into consideration when looking at the overall exposure to risk. I don’t think this was inappropriate. And Five Wealth wasn’t acting as a discretionary investment manager. It was obliged to review the investments and provide advice, but it was ultimately the deputy’s decision whether he acted on that advice. So, in highlighting when and where the investments may not have been aligned with Miss H’s investment objectives or agreed risk profile, I’m satisfied Five Wealth fulfilled its obligations.

Mr L says there was little or no communication from Five Wealth and a lack of any changes to the investments. I don’t agree. I’m satisfied that a review took place on at least an annual basis. As part of the review, Five Wealth sought information about any changes to Miss H’s circumstances and income requirements. It also reviewed the investments to ensure they continued to meet Miss H’s objectives, and that they were aligned to the agreed risk profile. And it recommended changes where appropriate. Five Wealth has provided evidence of the annual meetings in 2017 and 2018 and letters setting out the outcome of its reviews and its recommendations.

Five Wealth says it couldn’t arrange a meeting during 2019 or 2020, before Mr L was appointed as Miss H’s deputy. I find it tried to contact the deputy to arrange the usual meeting but that the deputy failed to respond. In the absence of a meeting, I’m satisfied that Five Wealth set out its recommendations in a letter. This wasn’t a discretionary arrangement, so Five Wealth couldn’t make any changes to the investments without the deputy’s agreement. Overall, I think it took reasonable steps to contact the deputy.

The agreed strategy was that gains from the unit trust portfolio would be realised over time to invest in ISAs. I find Five Wealth made recommendations to utilise Miss H’s annual ISA allowance each year. So I don’t agree with Mr L when he says recommendations weren’t made and that Miss H lost out on the opportunity of tax-free growth within an ISA wrapper.

The ISA investment didn’t go ahead for the 2018/19 tax year because, whilst the funds had been raised and paid to the deputy’s account, the deputy didn’t transfer them into Miss H’s ISA account. I can see Five Wealth reminded him he needed to do this before the end of the tax year, so I don’t think it can reasonably have done anything more. And it wrote to the deputy before the end of the 2019/20 tax year with its recommendations for utilising that year’s allowance, but, as noted above, the deputy didn’t reply.

Mr L says the tax treatment of the investment bonds, and the failure to insure more than one life, made them unsuitable for Miss H. Five Wealth didn’t recommend the bonds, so I can’t hold it responsible for the initial advice or the way the life assurance element of the bonds was set up. Mr L has brought a separate complaint about the initial advice and our service has considered this separately.

Five Wealth was responsible for reviewing the performance of the bonds and ensuring they remained suitable for Miss H. I can’t see that Five Wealth commented specifically on the suitability of the bonds themselves. But Miss H needed her investment to provide her with an annual income of £30,000 and I’m satisfied that the investment bonds met this objective.

I can see that Five Wealth recommended changes to the underlying bond investments from time to time to ensure they continued to meet her objective and risk profile.

Five Wealth wasn't obliged to provide tax advice and it was for the deputy to seek independent tax advice if he needed it.

For the reasons I've explained, I'm satisfied that Five Wealth provided the agreed service and that it carried out regular reviews to ensure the investments remained suitable for Miss H's circumstances, objectives, and risk profile. It follows that I don't find Five Wealth is obliged to refund its annual management fees or pay Miss H compensation.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 22 August 2023.

Elizabeth Dawes  
**Ombudsman**