

Case study

Friendship tested

An older couple had been clients of an authorised financial adviser for over 20 years. They had become quite good friends and the adviser had handled all of their insurance and investment requirements.

Both of them were nearing retirement and felt their current home would not be suitable in the long term. It was a great property but on a hilly section and a long way away from any shops.

They asked the adviser what they should do. He suggested they should sell their current property and buy a home better suited to their long-term needs. They started looking at other properties but could not find one that met all their requirements. The adviser then suggested building a new home that would be designed especially for them.

However, this meant the couple would need to sell their current property and live somewhere whilst their new home was being built. They did not like that idea. Fortunately, the adviser had built and sold homes in the past and knew the process very well. He offered to purchase the land and put them in touch with a house designer and builder, both of which the adviser had worked with previously.

A partnership was established between the couple and the adviser. They paid the adviser \$20,000 as a 'deposit'. The adviser used these funds to engage the designer, quantity surveyors and to cover other out of pocket expenses. However, none of this was documented. The adviser purchased the section and the build planning started.

As time went on, the couple started to doubt their decision to build. The cost for the home had increased to quite a high level and the husband became concerned they would be in too much debt in their retirement. The couple decided to withdraw from the home build and asked the adviser to return the \$20,000 deposit. The adviser declined, claiming it had been spent on out of pocket expenses and to cover the loss of the sale of the land.

The complaint was referred to Financial Dispute Resolution Service.

Unfortunately, despite the adviser's best intentions he had placed himself in a poor position.

Firstly, there was no doubt the service he had provided his friends and clients was 'advice'. This meant as an Authorised Financial Adviser he had a high level of duty of care. He should have followed a compliant advice process including documenting each step in the process. He had not done this.

Secondly, in relation to the deposit there was no disclosure of what it would be used for and that it was non-refundable. When spoken to, the adviser stated that he was simply trying to help his friends find a new home that would suit their retirements needs. Whilst this was commendable, the adviser needed to still follow all the compliance requirements of providing financial advice.

Through mediation and negotiation, the couple came to a private agreement with the adviser and the matter was resolved.

