

## The complaint

Mr S complains about the redress offered by Financial Administration Services Limited, referred to as “Fidelity” or “the business”, in relation to it mistakenly removing a substantial sum of money from his ISA that he planned to move and re-invest with another platform.

## What happened

Fidelity accepts that on 6 April 2022, it incorrectly removed £239,797.57 from Mr S’s ISA. To put things right, it initially approached HMRC asking it to reinstate the funds into the ISA, but to date HMRC hasn’t responded. So, to progress matters, Fidelity carried out its own calculations, but Mr S (in consultation with his Independent Financial Adviser (IFA)) disagreed with the business’s assessment of redress. Unfortunately, it would seem neither of the calculations put forward by the parties accord with the general approach adhered to by our service.

One of our investigators considered the complaint and thought it should be upheld. In light of the above, in summary, she made the following key findings:

- The error only came to light when Mr S tried to transfer his funds to another platform where he could invest in Swiss Francs. There is evidence of him discussing his investment strategy with his IFA in the lead up to this situation. It’s likely that had the business not made an error, he would’ve invested his ISA funds in “*The Wisdom Tree Long ChF (Chf) Short GBP*”, referred to as “Chf” or “the Wisdom fund”, at the same time he invested his pension. She’s satisfied that Mr S intended to transfer his ISA and pension and invest simultaneously. His pension provides a clear timeframe which Fidelity should use when calculating redress.
- It’s not reasonable for Fidelity to use the FTSE UK Private Investor Growth Index, because Mr S had specifically identified the Wisdom fund as the product he wanted to invest in. So, to put things right, Fidelity should reconstruct the investment as if he’d invested in the Wisdom fund. This means calculating if there’s a difference to the investment value at the date it should’ve started, to now, and adding this sum to any related performance back into the investment.
- Although Fidelity referred to the methodology used by our service (where an ISA wrapper is lost), it hasn’t used the approach correctly.
- Because it’s extremely difficult to know for sure what would’ve happened if things hadn’t gone wrong, our service uses a number of assumptions (highlighted below) – the rates of return referenced are based on those set by the industry regulator, the Financial Conduct Authority (FCA), in the FCA Handbook.
  - The investment will be held for 10 years:
    - Fidelity said it would take Mr S 12 years to reinvest the money into the ISA. But acknowledging that he was fully funding his ISA each year, it adjusted its calculation to 29 years, assuming 25% of his allowance will be used for new contributions, and 75% for the removed funds annually. This also assumed that Mr S will hold the investment until he’s around 90 years of age.
    - Fidelity’s calculations don’t fairly reflect Mr S’s investment behaviour of fully funding his ISA each year. On a balance of probabilities, he

was likely to continue to fully fund his investment for some time. Our approach is to assume that the investment would be held and fully funded annually for 10 years, so this is the approach that it needs to take.

- The investment will grow at 7.5% each year:
  - Fidelity assumed a yearly investment growth rate of 4.5% outside the ISA and 5% within it. The FCA handbook is 7.5% yearly. This needs to be calculated and added to the overall investment to provide a more accurate value.
- The investment will be sold after ten years and taxed at the highest rate applicable:
  - Fidelity said it has considered the impact of capital gains tax (CGT) on redemption, assuming 50% of Mr S's current annual CGT allowance will be available to use to fund the reinvestment of the ISA each year.
  - Our service approach is to calculate redress on the assumption that the investment will be held for 10 years, and its only at the end of that term that CGT will trigger. The assumption is also that Mr S will be taxed on the investment at the highest rate applicable to him and that his tax position remains unchanged for as long as he holds the investment.
  - Fidelity should calculate the value of the fund – as suggested above – and then assess his CGT liability, for which he should be compensated. The business can liaise with him or his IFA to gather information regarding his tax position so that it can conduct the calculations.
- Fidelity has offered Mr S £2,000 compensation for distress and inconvenience caused which is fair and reasonable in the circumstances
- It also provided details of its own calculations.

Fidelity disagreed with the investigator's view regarding the calculation methodology for compensation. In summary, it made the following key submissions:

- It doesn't feel it prudent to wait any longer for a response from HMRC, which is unlikely to be forthcoming, or if it is, the request to correct the error is likely to be denied.
- It accepts that its calculations may not have taken into account certain circumstances and would like the investigator to recalculate using some additional information.
- There's no suggestion that Mr S would've 100% invested in the Wisdom fund. Transferring all funds into a single focused investment – based on one single currency – could be considered unrealistic and exceptionally high risk. In the past it was suggested that he'd invest in a 'similar' way to his SIPP, implying that it wouldn't be exactly the same.
- Mr S was planning to retire in just seven years, therefore was likely to need his funds then.
- The Wisdom fund is also the only fund that has increased in value and therefore the assertion that Mr S would've invested in this fund is done so based on past performance. It therefore disagrees with the investigator's suggestion that the whole redress should be calculated using this fund.
- It appears that a fund switch took place during this period, and its willing to mirror the fund switch during its calculations.
- It doesn't agree that the investigator's suggestion in terms of the wrapper tax loss is in line with our service's approach. Regardless of what Mr S's previous contribution, an approach using 50% contribution from the new money and 50% reinvested funds would provide a compensation calculation approach in line with our service. It's able

to revise its approach to reflect 10 years, and then a full encashment of the remaining holdings outside of the ISA.

- It doesn't agree with a 7.5% investment growth. It has used the recent growth rate rather than the one from 2017, which allows for rates both inside and outside of tax efficient environments. It believes the medium term should be used. It notes the performance of the SIPP is less than 2.5% which more closely mirrors the mid-range.
- It's in agreement with the 10-year term and is happy to adjust its calculations accordingly. It notes that Mr S has confirmed that he hasn't utilised his CGT allowance at all in recent years. Mr S is currently receiving financial advice and should continue to do so in order to mitigate any further/future loss.
- A lumpsum payment – 10 years in advance of any tax liability crystallising – allows Mr S to invest the proceeds in the meantime, and this should be taken into account.
- It agrees that the £2,000 compensation is fair and reasonable in the circumstances.

Mr S made the following key submissions:

- There's no doubt that the responsibility for this error lies with the business.
- The decision to move his funds from GBP to the Wisdom fund was his, following analysis of the market and seeking advice from acquaintances who are economists – he felt the GBP was going to suffer significant loss over the immediate future. Having then received advice from his IFA he decided to place his funds in the Wisdom fund, as it turns out, it was a wise decision.
- He's never said that he'd retire in seven years. He has built a successful practice with his colleagues that he's likely to continue with.
- Using words such as "similarly", "mirrored" or "exactly" are just semantics. The email dated 21 March 2022 confirms his intention regarding plans to invest in Swiss Francs.
- It's outrageous to suggest that Mr S (and his IFA) retrospectively chose the Wisdom fund based on past performance.
- The loss should be made based on the actual gains made by the SIPP over the relevant period.
- He agrees that 100% of his allowance should be available to him rather than what's been suggested. He also agreed that growth should be calculated using a growth rate of 7.5%. He assumes this includes both investment growth and dividend payable and re-investment of the same.
- He doesn't agree that he should be subject to the provision that his investment will be sold after 10 years and taxed at the highest rate applicable. He has personal investments in stocks and cryptocurrency, and there's absolutely no reason why he should compromise his tax planning to mitigate the business's error.
- It's no surprise that Fidelity agree to the 10-year plan, it previously suggested a period of 29 years – which is what our service should use.
- Whilst he's grateful for the investigator's finding in his favour, he was planning to keep his ISA for backup funding for his old age, which shows it was to be held for more than 10 years.
- Despite what the business says about gains crystallising, it's not expected that Bank of England rate will rise "considerably".
- It's difficult to agree the £2,000 payment for distress and inconvenience for the damage actually caused.
- He doesn't agree with Fidelity's methodology for calculating redress. He has provided a calculation of his own, which is significantly different to business.

Fidelity having considered the submission from Mr S provided a revised approach, but Mr S disagreed and put forward his own submissions in relation to why his approach is correct,

reiterating many of his points. He feels the business is deliberately behaving in a way so as to limit its financial liability.

As no agreement has been reached, between the parties and the investigator, the matter has been passed to me for review.

### **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.

Having done so, I agree with the investigator's conclusion for much the same reasons. I'm going to uphold this complaint.

Because Fidelity initially upheld the complaint, and there is no dispute that the substantial funds in question ought to have been protected from tax inside an ISA wrapper, the key issue for me to consider is redress and whether or not what is offered by the business is fair and reasonable.

I note that due to the time elapsed and lack of response from HMRC it's probably not possible to back date the subscriptions and that's why Fidelity has instead offered to compensate Mr S for this.

Having considered the offer of redress from Fidelity, on the face of the evidence, and on balance, despite what it says, I'm unable to safely say that the redress is fair and reasonable.

On balance, I think the redress recommended by the investigator is broadly fair and reasonable. Based on a number of assumptions, it reflects the general approach taken by our service in such circumstances.

In other words, the approach we use in these situations to put the investor as close to the position they would've been in but for the error. So, whilst I appreciate what the parties say, and the reasons behind this, I'm not persuaded to depart from the general approach taken by our service – as recommended by our investigator. In other words, I'm not persuaded to follow either of the party's suggestions, because they don't accord with our general approach.

Before I explain why I can't give Mr S what he wants, I think it's important for me to recognise his frustration and strength of feeling about this matter borne primarily out an error by the business. He's provided detailed submissions to support the complaint, which I've read and considered carefully. However, I hope he won't take the fact my findings focus on what I consider to be the central issues, and not in as much detail, as a discourtesy.

The purpose of my decision isn't to address every single point raised. My role is to consider the evidence presented by Mr S and the business, and reach what I think is an independent, fair and reasonable decision based on the facts of the case.

In deciding what's fair and reasonable, I must consider the relevant law, regulation, and best industry practice, but I'm not bound by this. It's for me to decide, based on the information I've been given, what's more likely than not to have happened. In short, my findings as to the redress are as follows:

- In the circumstances, and on balance, I think the timeframe suggested by Mr S's Pension is broadly fair and reasonable – I note that on 23 September £537,130 of his

pension was invested, which suggests that had the error not occurred this is when the funds in question would've also transferred.

- In this instance, and on balance, I think this is the date that the business should use, because it broadly represents when Mr S would've invested.
- I don't agree with the business's suggestion to use 4 November as the appropriate date for the loss of opportunity, I also don't think its rationale for doing so – namely the date by which Mr S would've received his money and therefore be in a position to invest as he would've wished – applied in this situation.
- In the circumstances I'm not persuaded that the approach initially proposed by Fidelity – to use the FTSE UK Private Investor Growth Index in full or in part – is reasonable.
- Despite what the business says, on balance I'm satisfied that Mr S would've – more likely than not – invested (in whole) in the Wisdom fund, therefore this is the indices that Fidelity should use in calculating redress.
- I'm mindful of the research initially conducted by Mr S and the subsequent discussions with his IFA in the lead up to trying to transfer his funds to another platform, so that he could invest. Therefore, I'm satisfied that the Wisdom fund should be used in respect of calculating redress, despite the reference to the March 2022 discussions with his IFA.
- I agree that without the benefit of hindsight, it's difficult to know for sure what would've happened if the business didn't make an error. That's why our service adopts an approach based on various assumptions as listed above in the background section of this decision, which I agree with when calculating redress.
- In this instance, I think the calculations based on a 10-year assumption is fair and reasonable. Despite what Mr S says about the business's initial offer – based on returning assets to the ISA over a 29-year term – I'm not persuaded that it's reasonable. I think a 10-year period is reasonable – given the potential changes in tax, personal circumstances, and market conditions – and it's in line with our approach. Despite what Mr S says about his retirement in 10 years, I can't see any justification for using a 29-years (or longer) period in this instance. Despite what Mr S says, I'm mindful that there's no easy way to determine for sure how long he would maintain the investment.
- Also, this should reflect Mr S's investment behavior of fully funding his ISA each year, whilst keeping it for 10 years. That said, I don't agree with the business's suggestion to only use 50% contributions from new money and invested funds.
- I note the point the business makes about previous decisions, but regardless of what may have been decided by an ombudsman in the past, I'm not bound by previous ombudsman decisions. Whilst I appreciate the need to be consistent in our approach, I'm also mindful that every case must be decided on its own facts, which is why I don't agree with the business's approach in this instance.
- It's in dispute which CGT rates should be, I'm aware the business says 20% whilst Mr S thinks it should be 45% - I think it should be at the highest rate available. In this instance I think the business can liaise with Mr S and his IFA and perhaps HMRC if necessary.
- In any case, I think the business will need to use the rate of 7.5%, to counter the impact of inflation, in line with our service's approach, and I'm persuaded that this should be calculated on a compound basis.
- On the face of the evidence, and on balance, despite what the parties say, I agree with the investigator's recommendation for redress – in terms addressing the financial loss Mr S is likely to suffer due to the error by the business.
- In the circumstances and on balance, I think the £2,000 redress offered by the business is broadly fair and reasonable. On balance I think the error could've been rectified more swiftly than it has been. I think the compensation better reflects the impact this error has had on Mr S over a significant period.

In the circumstances and on balance, to put things right, Fidelity should do the following:

- Calculate if there's a difference in value from when the investment ought to have started (same date as the pension) to now. And add this sum, if higher to any related performance back to the investment.
- The following assumptions should also apply:
  - The investment (that's now outside the ISA wrapper) will be held for 10 years – from the point the ISA wrapper was lost – with 100% of his allowance being used, as evidenced by Mr S's tendency to do so in the past.
  - The investment will grow at 7.5% each year, as per FCA guidance, comprised of 5% growth and 2.5% dividend.
  - The investment will be sold after ten years and taxed at the highest rate applicable. The business can liaise with Mr S and his IFA to establish his CGT liability in order to calculate redress.
- Use these assumptions to work out the expected tax burden resulting from the error, and pay this amount as a lump sum to Mr S.
- Fidelity should also pay £2,000 compensation for the distress and inconvenience caused which I think is fair and reasonable in the circumstances.

I appreciate Mr S will be unhappy I've reached the same conclusion as the investigator. Furthermore, I realise my decision isn't what he wants to hear. But on the face of the available evidence, and on balance, I'm unable to give him what he wants.

### **Putting things right**

To put things right, Financial Administration Services Limited should do the following:

- Calculate if there's a difference in value from when the investment ought to have started (same date as the pension) to now. And add this sum, if higher, to any related performance back to the investment.
- The following assumptions should also apply:
  - The investment (that's now outside the ISA wrapper) will be held for 10 years – from the point the ISA wrapper was lost – with 100% of his allowance being used, as evidenced by Mr S's tendency to do so in the past.
  - The investment will grow at 7.5% each year, as per FCA guidance, comprised of 5% growth and 2.5% dividend.
  - The investment will be sold after ten years and taxed at the highest rate applicable. The business can liaise with Mr S and his IFA to establish his CGT liability in order to calculate redress.
- Use these assumptions to work out the expected tax burden resulting from the error, and pay this amount as a lump sum to Mr S.
- Fidelity should also pay £2,000 compensation for the distress and inconvenience caused which I think is fair and reasonable in the circumstances.

### **My final decision**

For the reasons set out above, I uphold this complaint.

Financial Administration Services Limited should calculate and pay the redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 7 July 2023.

Dara Islam  
**Ombudsman**