

## **The complaint**

Mr D on behalf of Mr L's estate complains about the delay caused by Cofunds Limited in transferring Mr L's investments, resulting in a higher inheritance tax liability than anticipated. Mr D is the executor for the estate.

## **What happened**

In 2018 Mr L received financial advice to mitigate his inheritance tax liability (IHT) by transferring and investing funds from his estate into an AIM investment plan run by another provider that I'll call X. The funds amounted to approximately £200,000, around £32,000 of this had come from Mr L's cash reserves and the remaining funds were held within Mr L's stocks and shares ISA with Cofunds.

Cofunds received Mr L's instructions to sell down and transfer his ISA funds on 3 September 2018. But due to delays, it didn't complete until 12 October 2018 – once the transfer had completed Mr L's funds were invested as he intended.

On 16 October 2020 Mr L sadly passed away, in order for the estate to benefit from the IHT relief the investment needed to be held over two years. But Mr L's funds were not entirely invested for the qualifying period, and this resulted in a higher inheritance tax liability than originally anticipated by the estate.

Unhappy about this, Mr D complained to Cofunds. He said, due to the delay in transferring Mr L's funds the estate was liable to an IHT bill of around £41,819.19. Had it not been for its error the funds would've been fully invested within the two-year qualifying period and so to put things right he said Cofunds should pay the tax bill.

Cofunds looked into Mr D's concerns but didn't uphold the complaint. In short it said whilst it had delayed the transfer it didn't think it was responsible for paying the tax bill. It said Mr L could've instructed it to transfer sooner than he did, it wasn't aware that the transfer was time sensitive and had it known, it would've prioritised the transfer. Because of its error, Cofunds offered £1336.77 for the financial loss caused by delaying the sale and transfer of Mr L's ISA plus £35.18 interest. As well as £300 compensation in recognition of the distress and inconvenience its error caused, so a total of £1671.95.

One of our Investigator's looked into the complaint and thought it should be upheld. During his investigation he confirmed with X what was the likely timescale of the funds being invested into the qualifying investment had Cofunds not delayed the sale and transfer. This was to determine whether the delay did cause an issue. It said, had it received the funds sooner it estimated that at least 88.6% of the funds could've been invested by 16 October 2018 and so would've qualified for IHT exemption. Our Investigator said Cofunds would need to pay Mr L's estate the amount they would've saved on their IHT bill as it had caused delays resulting in the funds not being invested for as long as they needed to.

Cofunds didn't agree, in summary it maintained its original position on why it didn't think the complaint should be upheld. It said Mr L could've planned for an IHT liability much sooner than he did. It also said there was some delay between Mr L receiving financial advice to invest in the AIM investment plan to when he acted on the advice and so the loss could've been mitigated.

I sent my provisional decision on 24 February 2023. My findings, which also form part of this decision, were as follows:

#### *My provisional findings*

*Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.*

*Having considered everything, I broadly agree with the conclusions reached by our Investigator, I'll explain why.*

*All parties agree there was a delay in transferring Mr L's funds to another provider. When a business has delayed a transfer, I firstly need to consider if there was any financial impact. Mr D has said £32,000 of Mr L's funds were transferred from Cofunds without delay. This was invested in time to qualify for the IHT tax relief and so there were no issues with this transfer. But Mr L also instructed Cofunds to transfer approximately £190,000 which took almost six weeks to complete and so the majority of this didn't qualify for the IHT exemption.*

*Cofunds has recognised it caused delays, from what I've seen it received the request to transfer out on 3 September 2018 and the transfer completed on 12 October 2018. Cofunds has said if everything was processed within its usual timescales the transfer would've completed by 14 September 2018. Mr L sadly passed away on 16 October 2020 which meant the majority of the funds transferred to the other provider hadn't been invested into the AIM investment fund in time and fell outside the scope of the IHT relief benefit.*

*It's difficult to know with any certainty what would've happened but for the delays, so I've thought about what was more likely to have happened if the funds had transferred within a reasonable amount of time. I've seen evidence from X, it confirmed the transfer was received by it from Cofunds, in cleared full funds on 15 October 2018. From this point it took about six weeks to fully invest into the AIM investment fund. I've seen a breakdown which illustrates, based on the trajectory the investment took the funds would have been invested in full by 2 November 2018. As I've said, Mr L passed away on 16 October 2020 so only the funds that were invested by this date would've benefited from the IHT tax relief. X estimated that had it received funds sooner than it did, by 16 October 2018, 88.6% of the funds would've most likely qualified for tax relief and I'm persuaded this would likely be the case.*

*Cofunds hasn't provided an explanation as to why the transfer didn't complete sooner but it has confirmed it caused unnecessary delays. I appreciate it says it wasn't made aware that the investment was time sensitive but looking at the bigger picture there was no certainty as to when Mr L would've passed away. In any event at the time Mr L received the advice around mitigating the estates IHT liabilities it was not known how long Mr L was likely to survive and so I can't fairly conclude that Mr L contributed to the loss incurred by not seeking advice sooner or by not planning for IHT liabilities sooner.*

*Cofunds also questioned why Mr L didn't act sooner on the financial advice he received in 2018, again I can't say for certain why it took him a couple of months to request the transfer, but I don't think this carries much weight in that it was Mr L's decision as to if and when he acted on that advice. It was Cofunds responsibility to ensure that the transfer completed within a reasonable amount of time, and I can't say that it did.*

*I am satisfied, but for the delays caused by Cofunds most of Mr L's funds would've been invested into his intended IHT vehicle for two years at the date he passed away. If this had happened, the estate wouldn't have been liable to pay a tax bill.*

#### **Response to provisional decision**

Mr D responded to say he on behalf of Mr L's estate accepted my findings. But said he didn't think the estate had received £1671.95 previously offered by Cofunds. Our Investigator got in touch with Cofunds, it confirmed £1336.77 was credited to Mr L's ISA wrapper on 25

March 2021. The trouble and upset offer of £300 plus the loss of interest of £35.18 was made in its complaint response on 29 March 2021. It confirmed it hadn't yet paid £335.18 but was willing to pay this if it was provided with the correct account details. Mr D provided the estate account details and confirmed he was willing to await my final decision. I'd like to point out now that I won't be directing Cofunds to pay the trouble and upset offer and so Mr D should get in touch with Cofunds directly to find out if it is willing to pay this.

Cofunds replied and said it thinks Mr L's representatives were the ones with the primary responsibility to address succession wealth planning and part of that responsibility was to take appropriate timely action. It went on to say, the decision to transfer out in an attempt to avoid IHT was a high-risk strategy and so it thinks the financial loss was due to contributory negligence on the part of Mr L, his representative, his financial advisor and Cofunds. It thinks all parties should share the responsibility for the loss.

### **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.

Neither party has provided any additional evidence that leads me to a different conclusion here. Cofunds has argued that Mr L, his representative and his financial advisor should bear some responsibility for the loss due to contributory negligence. I've considered this but I don't agree.

I addressed this point within my provisional findings but for completeness I'll address it again here. Mr D on behalf of Mr L acted on the financial advice to invest into an AIM investment plan to mitigate any potential IHT liability. At the time Mr L received the advice it was not known how long Mr L was likely to survive and so I can't fairly conclude that Mr L, his representative or financial advisor can be considered to be partially responsible for the loss incurred.

Taking action to mitigate IHT later in life is not in itself negligent – there was no certainty as to how long Mr L would've survived and so I'm not persuaded Mr L knew or reasonably should've suspected he wouldn't survive the two-year qualifying period. Further, it's not reasonable to suggest Mr L or his representative could've foreseen unnecessary delays and so in the circumstances I don't think it would be fair to reduce compensation on the basis that Mr L or any third party related to this complaint should share blame for what happened. Cofunds caused a delay, but for that delay, no IHT would be payable on Mr L's estate. So, it follows that Cofunds is at fault for this and should compensate the estate.

Taking all the above points together – I will not be departing from my provisional findings in this matter.

### **Putting things right**

In assessing what would be fair compensation, I consider that my aim should be to put the estate as close to the position it would probably now be in if Cofunds hadn't caused delays. I've been provided with a breakdown of Mr L's estate. I'm satisfied this was prepared by a qualified professional. The breakdown confirms that if the delays caused by Cofunds hadn't happened the value of Mr L's chargeable estate would've been such that no tax liability would've been payable as it would be less than his available nil rate band.

It follows that I uphold this complaint and find that Cofunds needs to take the following steps to put things right:

- (A) Pay the estate of Mr L the full amount of inheritance tax at £41,819.20. Cofunds is able to request receipt of these funds having been paid from the estate.

(B) Pay the estate of Mr L simple interest on (A) above at the rate of 8% per year from the date the inheritance tax bill was paid until the date of my decision.

(C) If Cofunds Limited has already paid the estate of Mr L any part of the inheritance tax or interest on this, Cofunds Limited may deduct this from the sums due above.

### **My final decision**

My final decision is that I uphold this complaint and direct Cofunds Limited to calculate the redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr L to accept or reject my decision before 12 April 2023.

Rajvinder Pnaiser  
**Ombudsman**