

The complaint

Mrs P has complained that Citibank UK Limited ('Citi') failed to inform her of a corporate action that was to take place on one of her investments. She says she has lost out financially as a result.

What happened

Since June 2021 Mrs P held a holding of Fidelity Taiwan USD Fund with Citibank. In October 2021 Fidelity announced the Fund was to merge into the Greater China Fund on 17 January 2022. Mrs P should have been given the opportunity to either sell her holding, exchange the Fund for other Fidelity funds or receive shares in the newly merged Fund. Mrs P wasn't notified of the merger and she is unhappy as she says she would have sold her shares on the day before conversion. She suffered a loss when she did sell her shares in the newly merged Fund and wants to be compensated for this.

Mrs P complained to Citi. In its response dated 17 June 2022 it rejected the complaint. It said;

- The merger was a mandatory corporate action and as such it didn't have to notify clients prior it taking place.
- Mrs P could sell her holding of Fidelity Greater China USD Fund if she wanted to.
- It apologised that Mrs P wasn't responded to when she asked for details about the merger.

Mrs P wasn't happy with the outcome to her complaint and brought it to the Financial Ombudsman Service. Our investigator who considered the complaint thought it should be upheld. She said;

- Citi had referred to its Investment Terms of Business – clause 2.22.15 but the investigator didn't think it was fair for Citi to rely on that term.
- Mrs P did have options to choose from prior to the merger and it would have been reasonable for Citi to have passed this information on to her.
- She was persuaded Mrs P would have opted to sell her holding prior to the merger.
- She thought Mrs P should be compensated if there was a difference in the price she would have received on 7 January 2022 – the cutoff date for a sale in the Fidelity Taiwan USD Fund prior to the merger – compared to the dates the Fund was sold. 8% interest should be added to any loss for the period to the date of payment.
- Mrs P should also be paid £100 for the inconvenience and frustration she had been caused.

Mrs P agreed with the investigator.

Citi said that if it used the date of 7 January 2022, as recommended by the investigator, Mrs P wouldn't have suffered a loss. As a gesture of goodwill, it said it was willing to offer to pay redress as if the shares had been sold on 17 January 2022 – the date of the merger –

compared with the price on 17 February 2022. It used this date as it was the date the new fund holding was added to Mrs P's account. It said that Mrs P was free to sell her holding from this point onwards. The redress would be USD1,162.87.

Mrs P didn't agree with the proposed dates. She said that the first she was aware of the new fund was on 1 March 2022. Between then and the date she raised her complaint she kept chasing Citi for information about the new fund and how many shares she held. Citi's reply to her complaint on 17 June was the first response or clarification she had received and she was then told on 4 July that her account was being closed – with 60 days' notice – at which point she tried to transfer the holding but was prevented from doing so by Citi. She saw that the fund share price had fallen and didn't sell the holding as she didn't want to crystallise any losses. Mrs P had no option but to sell the holding in October.

The investigator wrote to the parties again. She was satisfied with the reasons Mrs P gave for not selling her fund earlier than October – she didn't want to incur losses and compensation by Citi had been discussed during phone calls. She didn't think it was unreasonable for Mrs P to have retained the fund pending her transferring it to another nominee.

Even though the account closure notice said that Mrs P could transfer to another provider it appeared that her attempts to do so were blocked by Citi. So, the investigator had no reason to doubt Mrs P's testimony. And as Citi didn't provide any information about why it decided to close Mrs P's account she could only conclude that Citi was responsible for Mrs P being put in the position whereby she was forced to sell her holding in October. And that was because of Citi's original error in not telling Mrs P about the impending corporate action. She maintained that Citi should pay any redress to Mrs P if she suffered a loss when she did sell her shares compared to the price on 7 January 2022. If there was no loss, nothing was due to Mrs P with the exception of £100 for the inconvenience and frustration she had been caused.

Citi didn't agree with the outcome and asked for the complaint to be considered by an ombudsman, so it was passed to me. It provided additional information for my consideration. I issued a provisional decision. I agreed with the overall outcome reached by the investigator but thought the matter should be put right in a different way. But I wanted to give the parties the opportunity to provide any further information or evidence for me to review. Here's what I said;

'Citi has accepted that Mrs P should have been informed about the choices that were open to her prior to the merger. The crux of the complaint that remains is how to put the matter right. Mrs P has been consistent throughout the complaint process that she didn't want to hold shares in the Fidelity Greater China Fund. So, I have to consider at what point, if Mrs P had been appropriately informed by Citi about the impending merger, it is reasonable to assume that Mrs P would have sold her shares in either the Taiwan Fund prior to the merger or the Greater China Fund post the merger.

Citi has argued that Mrs P could have sold her shares much earlier than she did. To support its argument Citi has provided us with a notification it sent to Mrs P on 17 February 2022. I understand that postal delivery to Mrs P's (overseas) address would take between three to five days. So, I assume she received it on or around 20/22 February. That notice is headed 'STRUCTURED NOTES/MUTUAL FUNDS MERGER' and goes onto say;

'Receipt of 1,736.6567 units/shares of Fidelity Greater China Y-Acc-USD and delivery of 1,958.4800 shares/units of Fidelity Taiwan Y-Acc-USD on account of merger in the ratio .89 new share/unit for every one old share/unit held.'

Citi has also provided copies of emails sent to Mrs P.

I see that on 1 March 2022 she was notified by Citi's representative that the Fidelity Taiwan Fund was converted to the Greater China Fund. Citi's representative then said they were 'now collecting all the information and will return to you in the coming days with comments' which suggests to me that Mrs P had raised a query by that time, maybe in response to receiving the merger information notice that was posted to her.

On 17 March Mrs P was updated that management was reviewing the situation – I again assume this was further to her queries about what had happened. And on 31 March Mrs P was updated again that management was reviewing the situation. Citi also provided us with call transcripts for calls it said took place after that. While I don't know the dates of those calls, I can see that during the first one Mrs P was advised that her queries had been passed on to the relevant team and that team was considering the compensation amount. Mrs P wanted a clear explanation from Citi as she didn't understand what had happened to her Fidelity holding.

For the second of the calls Mrs P still hadn't received an answer (for over a month) to her queries. She was advised to raise a complaint. For compensation she wanted the value of her shareholding at the time of the conversion and she was happy for Fidelity to redeem the fund if necessary. It's explained to her that Citi wouldn't have the right to sell the holding and she would need to raise it. She was advised to include it in her complaint which she said she would make that day and which she did on 29 April. And I note the final paragraph of her letter of complaint says;

'I request Citibank to reimburse me for all losses associated with Fidelity Taiwan USD Fund conversion. This can be done through sales of my existing shares of Fidelity Greater China USD Fund plus paying compensation making total proceeds equal to the amount of proceeds as if my shares of Fidelity Taiwan USD Fund have been sold the day before conversion.'

I have to consider whether Mrs P made reasonable attempts to mitigate her losses. So, I've thought about whether there's an argument Mrs P should have taken further action sooner than she did by selling the investment.

Mrs P has said that it took her 'several months to figure out the reality and the details of the conversion and all this time the Fund was losing money'. I don't think that is unreasonable as Mrs P wasn't made aware of the impending merger and didn't know for sure what had happened. She was already in a loss position by the time she knew all of the details in late April. And she wasn't willing to sell the holding at a loss and wanted to wait for it to recover, hence her intention to transfer it in specie to another provider when she was told her account was being closed. However, that option wasn't open to her and Mrs P had to sell the shares in October which crystallised a loss.

As quoted above, Mrs P did refer to selling the holding in her letter of complaint to Citi. And in its response to that complaint on 17 June 2022 I note it says 'Please notify us should you wish to sell your existing shares...' Mrs P then brought her complaint to Financial Ombudsman on 8 July 2022.

Mrs P has said that 'At the time I knew all the details (and filed the complaint) I was in a loss position which I was not willing to fix and this is why I took all the efforts to transfer the shares to a different bank (not to sell)'.

So, I am satisfied that Mrs P was fully aware of her holding in the new fund and how it came about at the point she made her complaint to Citi as evidenced by the phone calls and emails she had with Fidelity's representative just prior to that. And it's clear from her complaint letter to Citi that she didn't want to hold the investment. She could have sold at that point as she was now fully informed. If her complaint had been upheld by Citi, then I would have expected Citi to pay for any losses that she incurred if she had sold it any time prior to making her complaint.

But as the complaint was rejected by Citi, Mrs P continued to hold the shares pending transfer to another provider and bringing her complaint to this service. But I don't think Citi can be held responsible for that delay in selling the shares. That was an investment decision made by Mrs P – to retain the shares hoping for an improvement in the share price. At that point if she had sold the shares at a profit, she would have retained that profit and I doubt this complaint would have arisen. But equally I don't think it would be fair to Citi to underwrite any losses Mrs P could have incurred after that point as it was her own decision to retain the shares.

So, I think it is the date that Mrs P made her complaint to Citi that should be the date for any redress calculation. It's clear that up until that point Mrs P didn't fully understand what had happened to her Fidelity holding and what action she could take which was only clarified in her final call with Citi which I assume was on the same day she made her complaint – 29 April 2022.

Mrs P has been consistent throughout her complaint that she doesn't want to hold the Fidelity Greater China USD Fund. I see from the documentation provided by Fidelity prior to the merger that the last date Mrs P could have sold her holding of the Fidelity Taiwan Fund prior to conversion was on 7 January 2022. And while I think it's more likely than not that Mrs P would have made a sale prior to the merger I can't know for sure what date Mrs P would have gone ahead with the sale. Bearing in mind that uncertainty I think it would be fair and reasonable to both parties to assume that Mrs P would have sold her Fidelity Taiwan Fund shares on 7 January 2022.

I see that when Citi decided to close Mrs P's account, she had to sell her holding. The Fidelity Greater China USD Fund was sold in two tranches;

- 1,465.0267 shares on 10 October 2022 raising USD30,487.21
- 271.6300 shares on 26 October 2022 raising USD5,109.36.'

I said that Citi should calculate to see if Mrs P had suffered a loss but initially I quoted the incorrect dates in my provisional decision and the parties responded to that provisional decision on that basis. But I wrote again, apologising to the parties and quoted the correct dates. To put the matter right I said Citi should;

- Calculate what Mrs P would have received if she had sold her holding of the Fidelity Taiwan USD Fund on 7 January 2022 and;
- Compare that with what Mrs P would have received if she had sold her shareholding of the Fidelity Greater China USD Fund on 29 April 2022 which was the first date she was fully informed about the new fund. If Mrs P had incurred a loss, that amount should be repaid to her plus 8% simple interest on that amount from 7 January 2022 to the date of settlement. If Mrs P hadn't suffered a loss nothing was due to her.

- I also said Citi should pay Mrs P £100 for the inconvenience she had been caused.

In response Mrs P said that she was satisfied with the corrected calculation.

Citi commented that the corrected dates were quite a significant change in what was originally outlined in my provisional decision.

It also commented that as I had said that 29 April 2022 was the date that Mrs P was first fully informed about the merger it wanted to draw my attention to the notification it had sent to Mrs P on 17 February 2022 which gave details of the merger. It believed that notification demonstrated that Citi had made Mrs P aware of the merger and she could have sold her holding from this point.

As Citi didn't agree, the complaint has been passed back to me to decide.

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.

I should first like to again extend my apologies to the parties for the typographical error in my provisional decision regarding the dates for redress purposes. The uncorrected copy was sent rather than the corrected copy, for which I apologise.

Mr P has accepted the corrected dates, but Citi has made comment about the notification document it sent to Mrs P on 17 February 2022 and that should be the date chosen for redress purposes.

I did refer to that document in my provisional decision, as quoted above. I said that as Mrs P lives overseas and my understanding was that assuming a delivery time of between three and five days, she would have received the notification around 20/22 February.

But in addition to that notification, Citi had also provided email correspondence from around that time which suggested to me that Mrs P was in touch with Citi's representative about what had happened to her holding. I say this because of the email of 1 March which said, with reference to the Fidelity Taiwan Fund, that Citi was 'now collecting all the information and will return to you in the coming days with comments'.

I was satisfied that this indicated that Mrs P had already been in touch with Citi about the holding and wasn't clear about what had happened – and her questions may have been prompted by the notification sent on 17 February but I couldn't know that for sure. But upon reflection, I don't think its an unreasonable assumption to make bearing in mind when she would have received the notification.

So I remain of the opinion that it wasn't until 29 April 2022 that Mrs P was fully up to speed with what had happened with her Fidelity holding and that she wasn't happy she hadn't been made aware in advance of the merger as she should have been.

Mrs P wasn't made aware in advance of the merger and I am satisfied that Mrs P didn't want to hold the merged Greater China Fund and she has been consistent throughout about that point. So, I think it most likely Mrs P would have sold the Fidelity Taiwan Fund the day prior to merger – the 7 January 2022.

But bearing in mind Mrs P wasn't given that opportunity I think it's fair and reasonable to assume that the first date Mrs P could have sold her (merged) holding was on 29 April 2022 as it was at that point she was fully aware of what had happened.

Because of that I remain of the opinion that Citi should calculate redress as outlined in my corrected redress method for the provisional decision.

Putting things right

To put the matter right Citi;

- should calculate what Mrs P would have received if she had sold her holding of the Fidelity Taiwan USD Fund on 7 January 2022.
- Citi should compare that with what Mrs P would have received if she had sold her shareholding of the Fidelity Greater China USD Fund on 29 April 2022 which was the first date she was fully informed about the new fund.
- If Mrs P has incurred a loss, that amount should be repaid to her plus 8% simple interest on that amount from 7 January 2022 to the date of settlement. If Mrs P hasn't suffered a loss nothing is due to her.
- Citi should also pay Mrs P £100 for the inconvenience she has been caused.

My final decision

For the reasons given, I uphold Mrs P's complaint and Citibank UK Limited should pay redress as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 21 September 2023.

Catherine Langley
Ombudsman