

The complaint

Mr and Mrs V complain that Perspective (North East) Limited (“Perspective”) didn’t give them clear information about the tax treatment of the investments it recommended to them. They say, as a result, they have incurred capital gains tax (CGT). They want Perspective to compensate them for their losses, which they estimate to be £8,279.

What happened

I set out what happened in my provisional decision, and I won’t repeat that again here. In summary, in or around 2021, following advice from Perspective, Mr and Mrs V invested £250,000 in global growth portfolios managed by a third-party provider, within general investment accounts (“GIA”) in each of their names. Mr and Mrs V complain they only realised capital gains and losses were being made when they decided to encash their GIA’s in 2024.

Perspective said:

- It was the investment manager, and not Perspective, who had crystallised gains and losses.
- Mr and Mrs V had told it that they managed their own tax and there was no discussion about utilising CGT allowances.
- Any gains or losses were disclosed during the annual meetings.
- Perspective is not a tax advisor and, as the GIA’s only formed a small part of Mr and Mrs V’s total assets, it wouldn’t be appropriate to rely on Perspective to provide a comprehensive overview of a client’s tax position.

Our investigator didn’t recommend that the complaint should be upheld. He didn’t think Perspective had any responsibility for Mr and Mrs V’s tax position and that Mr and Mrs V had told Perspective that they were monitoring CGT themselves.

Mr and Mrs V didn’t agree, so the complaint was passed to me. I asked both parties for some more information. As part of these exchanges, it became clear that Mr and Mrs V were also unaware that their GIAs had been producing income. Whilst this didn’t form part of their complaint to Perspective, it was so closely related with their complaint that I thought it was appropriate for me to also consider it.

My provisional decision

I was minded to conclude that the complaint should be upheld, and I explained why. I said:

As noted above, Mr and Mrs V have made it clear to us that they are not complaining about the performance of their investments. So I won’t be commenting on this further.

I think it’s clear Mr and Mrs V weren’t aware of the tax treatment of their GIA’s. When Perspective set out the annual gains and losses in its email dated 5 June 2024, Mr and Mrs V said, *“this is the first time we have been told about gains and losses that have been incurred over previous years...”*. They held a number of other assets

outside of the GIA's and I can see from what they told us that they were diligent in completing their annual tax returns, including reporting gains and losses from their other chargeable assets. So I think they would have contacted Perspective, or the platform provider, each year before they completed their returns to find out about the gains and losses made, had they known the GIA's were realising gains and losses.

I need to decide whether Mr and Mrs V's misunderstanding of the tax position was the responsibility of Perspective. In other words, did Perspective do enough – at the outset and on an on-going basis – to make things reasonably clear? And, if it didn't, what Perspective needs to do to put Mr and Mrs V in the position they'd be in now if it had done enough to explain the tax position of the investment.

Did Perspective do enough to make the CGT position of the GIA's clear at the outset?

I've firstly considered what happened when Perspective recommended the GIA investments. The recommendation was detailed in Perspective's Investment Report dated 16 November 2021. This was a detailed document which ran to 17 pages, and which contained several references to tax. I think it was made reasonably clear that the GIA wrapper didn't have any tax advantages. The report said:

General Investment Account (This type of wrapper does not [have] any particular tax advantages.); and

You must be aware that General Investment Account (GIA) is a non-tax advantaged wrapper, which means that no preferable tax solutions apply to this investment product.

A General Investment Account (GIA) is the name given to funds and assets on an investment platform which are not allocated to a specific tax wrapper and are therefore subject to normal UK tax.....

Mr and Mrs V say they understood this, but that they also understood a chargeable gain or loss would only occur when they gave instructions to withdraw money from the GIA wrapper. They placed reliance on the following information in the report:

1. *Any disinvestment from this wrapper may result in the Capital Gain tax liability (CGT)" [sic]*

Whilst this was accurate, it wasn't the only occasion when a CGT liability might arise. Chargeable gains and losses would also be incurred if the investment manager sold any of the underlying assets.

2. *Capital gains tax (CGT) liabilities are not created until either a partial or total encashment of units. Therefore the fund manager can buy and sell assets without creating a tax liability on the fund. To withdraw capital from the fund, you sell units. The sale of these units is treated as a disposal for CGT purposes.*

I think this wording also suggested that the only time there would be a disposal for CGT purposes was if Mr and Mrs V decided to sell any units – either by instructing a specific sale or by asking to withdraw money from the GIA's. I think the report failed to make it clear the difference between the fund manager and the discretionary investment manager. And that whilst any sales the fund managers made were free of tax, if the discretionary investment manager sold units this would be treated as a disposal for CGT purposes.

It's recorded in the suitability letter that one of Mr and Mrs V's objectives was:

Where possible, you want to make use of available CGT allowances to reduce the impact of tax on growth

And it listed one of the reasons for recommending investment in OEICs and unit trusts as:

.....to enable you to take advantage of the Capital Gains Tax allowances available to you in the event of capital growth on the portfolio.

I think this shows Perspective knew CGT mitigation was important to Mr and Mrs V. So I think it should've made sure they knew about the CGT position of the investment it had recommended. I don't think the suitability letter made the position clear enough, for the reasons I've explained. And I've not seen evidence to show that the position was explained during the meeting.

Should Mr and Mrs V have realised sooner than they did that capital gains and losses were being made in their GIA's?

In its final response letter Perspective said:

"I can see at your annual review meetings that as per the above tables any gains or losses against both your General Investment Account (GIA) Portfolios are clearly documented..."

The tables gave the valuation of the GIA's along with annual gain/loss figures. But these were *unrealised* gains or losses, being the "paper" gain or loss on the investment as a whole. I think this would have cemented Mr and Mrs V's (mis)understanding that the gain or loss would only be realised when they made a withdrawal from the GIA. The fact that Perspective used this as evidence to show Mr and Mrs V must've been aware of the correct tax position suggests the information it provided on an annual basis wasn't clear or fair.

Perspective has also relied on the fact that at each annual review meeting it was discussed whether there were any tax changes which might affect Mr and Mrs V and each year it was recorded that capital gains were "*monitored by [Mr and Mrs V]*".

In its final response letter Perspective said that it was not "*tax advisers per se and any matter of tax or tax advice is a matter for you to handle yourself and is not the responsibility of an Advisor or Perspective*". But Perspective was responsible for giving Mr and Mrs V accurate information about their investments so that they could "handle" the resulting tax implications. Perspective seems to think Mr and Mrs V expected it to provide them with tax advice, taking into account all their assets. They didn't. But they couldn't manage their CGT position, or report it accurately in their tax returns, unless Perspective provided them with the relevant information.

The GIAs were held on a third-party platform and Mr and Mrs V were given online access to obtain information about their GIAs. The platform provider was responsible for sending an annual tax report to Mr and Mrs V. Perspective sent us a copy of what it says Mr and Mrs V would have received – these were annual "capital gain/loss" summaries. But these had been reproduced. And, when we asked it to provide us with copies of what had actually been sent, Perspective provided us with different reports. I think it's more likely than not that it was these reports that were sent to

Mr and Mrs V each year. Whilst these reports contained information about purchases and sales during the year, they didn't show any gains or losses. Instead, the reports contained the following wording:

"If you dispose of any assets, you may be liable to capital gains tax. Please note that the original cost shown in the Portfolio Valuation should not be used to calculate capital gains. Instead, you can use our capital gains tool on Transact Online under Reports-Capital Gains"

I don't think this would have alerted Mr and Mrs V that capital gains and losses may have been realised. I say that because it refers to "you" disposing of assets and Mr and Mrs V hadn't disposed of any assets. They continued to reasonably understand that gains or losses would only be made if they decided to withdraw money from the GIA wrapper.

Whilst Mr and Mrs V had access to the online platform, they say they only used it occasionally to check the value of their investments. They weren't expecting any gains or losses to be realised, because of the unclear information they were given when the investment was recommended to them. So I find it was reasonable for them – knowing they hadn't made any encashments themselves – to have understood that there wouldn't be any CGT implications. So it follows that I find it wasn't unreasonable that they didn't check the gains/losses position or use the capital gains tax tool.

For these reasons, I find it was only when Perspective sent Mr and Mrs V its email on 5 June 2024 setting out the realised gains and losses, that Mr and Mrs V realised the correct position. I don't think there was anything earlier which would have reasonably made them realise they'd misunderstood.

Did Perspective do enough to make the income tax position clear?

As noted above, following our recent communications with Mr and Mrs V, they told us they didn't receive any dividends from the GIAs and no income was paid out to them; they didn't receive any information from the platform provider, or from Perspective, that notified them that there was any income which needed to be declared.

The November 2021 Investment Report included information about tax on income. It said:

The income distributed is paid without deduction of tax, but is taxable. The rate payable depends upon your marginal rate of tax, and the type of assets held in the fund. Share funds will pay dividends, while bond funds will pay interest.

Each individual has a £2,000 dividend tax allowance. Dividends above this level will be subject to tax at 7.5% for basic rate taxpayers, 32.5% for higher rate of 38.1% for additional rate taxpayers.

Nil or basic rate taxpayers will have a £1,000 savings tax allowance, and higher rate taxpayers a £500 savings rate allowance, within which no tax is payable. Above this, interest may be covered by either the personal allowance (£12,570 of any type of taxable income) or the starting rate of tax (0% on £5,000, savings income only)

Whilst Mr and Mrs V understood that tax would only be payable if the income was paid to them, I think the report was reasonably clear that tax would be due on dividends and interest paid within the GIA.

Perspective has provided us with copies of the platform provider's annual reports which clearly list the interest and dividends received. And I think it's made sufficiently clear that this information should be declared in tax returns. Mr and Mrs V say they never received these reports. I don't doubt Mr and Mrs V are, and have been, diligent in completing their returns, and it's clear they are shocked and upset to realise they didn't include income from their GIAs in their returns. But I don't find it's fair that Perspective should be held responsible for any interest or penalties they may now incur due to a late declaration. I say that because I'm satisfied from the copy annual reports provided that these were, more likely than not, sent each year by the platform provider and were correctly addressed. And I'm persuaded this information would have been fairly readily available when Mr and Mrs V checked their valuations online.

Having concluded that Perspective didn't do enough to make it clear that capital gains and losses would be realised by the investment manager when it made changes to the underlying investments, I went on to consider what Mr and Mrs V would have done differently if Perspective had made the tax position clear. And, following on from that, what Perspective needed to do to put things right. I said:

Whilst I can't be sure exactly what they would have done, I think it's likely they would still have gone ahead with the investment. I say that because I think they would still have wanted to invest some of their money with the aim of generating capital growth over the medium to long term. And, whilst they wouldn't have had control over the amount of gains or losses generated, they would have known to monitor the gains and losses being incurred so that they could mitigate and plan accordingly.

But, had they known about the capital gains and losses, they would have included them in their tax returns. In the circumstances I think the fair outcome here would be for Perspective to:

1. Reimburse Mr and Mrs V for any interest and penalties they incur for the late declaration of any capital gains.
2. Pay for a qualified accountant * to work out what Mr and Mrs V's tax position would be if they'd used the realised losses to offset their capital gains.
3. If the accountant calculates that Mr and Mrs V's tax liability would have been lower, Perspective should reimburse them for the additional tax they've paid. To reflect the fact that they've been without that money, Perspective should add interest at 8% simple per annum on the additional amount Mr and Mrs V paid, from the date they paid it to the date of settlement.
4. Mr and Mrs V were clearly upset when they realised that their investment had been realising capital gains and losses, because they managed their capital gains position carefully. I think it's fair that Perspective compensates them for the distress and inconvenience they've been caused. I think £200 is fair and reasonable in the circumstances.

Responses to my provisional decision

Perspective said it accepted my decision. It estimated that the cost of an accountant would be around £1,500; £300 would cover any HMRC interest and penalties; and it agreed to pay £200 for the distress and inconvenience caused. It offered to pay Mr and Mrs V £2,000 in settlement of their complaint.

We forwarded this offer to Mr and Mrs V for their consideration.

Mr and Mrs V rejected Perspective's offer. They said it didn't recognise the significant CGT liability they've incurred. They accepted my provisional decision, but asked for some matters to be clarified. In summary, they said:

1. If they'd known the investment would realise gains and losses that they had no control over, they wouldn't have gone ahead with the investment. But they accepted they may well have gone ahead with a different investment, and thus still incurred Perspective's initial fee of £1,250.
2. They have only incurred a CGT liability for the 2024/25 tax year. So there won't be any late declaration of gains.
3. The intention should be to put them in the position they'd be in if they'd been able to use the losses created by the GIA's in 2021/22 (£4,530 for Mr V and £7,821 for Mrs V) and in 2022/23 (£4,549 for Mr V and £7,872 for Mrs V) to offset any gains created in 2023/24 and 2024/25.
4. To avoid doubt, they want to know that the accountant will be asked to calculate what their tax liability would have been if the losses above were used against their 2024/25 gains. And, if HMRC won't allow these losses to now be carried forward as intended, the accountant should be asked to calculate their actual tax liability.
5. They are concerned that, if Perspective appoints the accountant, that accountant may not work in their best interests.
6. They would like confirmation that they have a free choice over which qualified accountant to use. They would like to complete their returns by October, so would like my final decision to include some timescales.
7. The only CGT they have paid so far is the estimated tax for 2024/25 on their property sale. They understand that, if this tax would have been lower, Perspective will pay them interest on any overpayment.

Mr and Mrs V also said they were grateful that the provisional decision recognised the upset they'd been caused.

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 have provided any new information or evidence which would lead me to depart from my earlier conclusions.

I fully understand Mr and Mrs V want to be certain what Perspective will be required to do as a result of my decision; particularly as they feel Perspective's offer following my provisional decision didn't fully recognise the financial costs they'd incurred. I'll respond to each of the points they've made, using the same numbering:

1. Mr and Mrs V understand why I've not asked Perspective to refund its initial fee, but say they wouldn't have gone ahead with the GIA's if the CGT position had been made clear. I accept I can't say with any certainty what Mr and Mrs V would have done. And I accept it's possible that they wouldn't have gone ahead with an investment at all. But I think, on balance, it's more likely than not that, had Mr and Mrs V decided not to go ahead with the GIA's, Perspective would have made an alternative recommendation which Mr and Mrs V would have accepted. After all, they'd approached Perspective for advice because they wanted to invest £250,000. So I think it's more likely than not that they would have still wanted to make that investment, and thus incurred Perspective's initial fee of £1,250.
2. I'd like to thank Mr and Mrs V for letting me know that there won't be any late declaration of capital gains, so they won't incur interest and penalties. But, as the accountant has yet to review their tax position, I think it's fair for me to require Perspective to reimburse them for interest and penalties, in case it's found that these do arise.
3. I confirm Mr and Mrs V's understanding of point 2 of "*Putting things right*" in my provisional decision. For the avoidance of any doubt, I have clarified this in the "*My final decision*" section below.
4. I confirm Mr and Mrs V's understanding of what the accountant should be instructed to do. And, again, I have clarified this in the "*My final decision*" section below. They may also choose to provide the accountant with a copy of this final decision.
5. Perspective is required to comply with this decision. It will therefore be required to instruct the accountant to work out what Mr and Mrs V's tax position would be if they'd used the realised losses to offset their gains.
6. I confirm Mr and Mrs V should provide Perspective with the details of the qualified accountant they would like Perspective to appoint to carry out this work. It will be in Perspective's best interests to ensure there is no delay in instructing the chosen accountant – to avoid Mr and Mrs V filing a late tax return which may incur penalties and interest, which Perspective will then have to reimburse. I think it's reasonable that Perspective instruct the accountant within two weeks of Mr and Mrs V providing it with the details.
7. I confirm Perspective will be required to pay Mr and Mrs V interest on any tax overpayment they've made as a result of the losses not being offset against their gains for 2024/25.

My final decision

My final decision is that I uphold this complaint. Perspective (North East) Limited should:

1. Reimburse Mr and Mrs V for any interest and penalties they incur for the late declaration of any capital gains.
2. Pay for a qualified accountant * to work out what Mr and Mrs V's tax position is, and what it would have been if they'd used the losses realised in 2021/22 and 2022/23 to offset any capital gains made in 2023/24 and 2024/25.
3. If these losses can't now be carried forward as intended, Perspective should reimburse Mr and Mrs V for the additional tax they've paid, or will have to pay. To reflect the fact that they've been without that money, Perspective should add interest at 8% simple per annum on the additional amount Mr and Mrs V paid, from the date they paid it to the date

of settlement. **

4. Mr and Mrs V were clearly upset when they realised that their investment had been realising capital gains and losses, because they managed their capital gains position carefully. I think it's fair that Perspective compensates them for the distress and inconvenience they've been caused. I think £200 is fair and reasonable in the circumstances.

* Perspective should instruct an accountant chosen by Mr and Mrs V. They should instruct the accountant within two weeks of Mr and Mrs V providing it with the necessary details.

** HM Revenue & Customs requires Perspective to take off tax from this interest. Perspective must give Mr and Mrs V a certificate showing how much tax it's taken off if they ask for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs V and Mr V to accept or reject my decision before 26 June 2025.

Elizabeth Dawes
Ombudsman