

## **The complaint**

Mrs P and Mrs S as trustees of the S Trust complain about True Potential Wealth Management LLP (TPWM). The trustees said TPWM should have provided them with advice about capital gains tax before they gave an instruction to withdraw the investment and create a tax liability.

## **What happened**

In 2009, the beneficiary's late grandmother contacted a third party and set up a discretionary trust. She arranged for her two daughters Mrs P and Mrs S to act as trustees. The trust has been represented by Mrs S throughout this complaint, and I have referred to her directly as much of the conversations have been conducted between her, TPWM and our service.

The bond that the trust was invested in performed well and the initial investment of £20,000 grew with investment gains. There was a life event, and the beneficiary was looking to buy a house. The trustees felt this was a good time to withdraw the funds from the trust and give them to the beneficiary to help him with this. They instructed the third party, who set up and administered the trust, to sell down and withdraw the funds. When they did this, it created a chargeable event certificate.

The adviser that arranged for the trust to be established in the first place, moved to TPWM and when he did, he also took with him an ongoing fee, called trial commission.

Mrs S complained that no one contacted the trustees to explain the capital gains tax implications of withdrawing the investment while it remained within the trust. She had worked out after the event that if they had transferred the trust and investment to the beneficiary for him to sell, then he could have negated a tax liability.

They complained to TPWM and the third party about this, and after some discussion between the parties, TPWM agreed to deal with the trustees complaint. Although they didn't provide an answer to their complaint and after a period, the trustees referred it to our service.

An investigator looked into the trustee's complaint. He said he didn't think TPWM needed to take any action. He concluded that he didn't think it needed to have provided advice about capital gains tax to the trustees, and that ultimately this was their responsibility to be aware of.

He said he had seen no evidence that there as an ongoing advice charge and that instead trial commission was being charged, that was agreed at the time between the parties. He said so there was no requirement for TPWM to provide ongoing advice. He said in addition, that TPWM did not need to calculate capital gains tax and instead this should be carried out by HMRC or a specialist.

The investigator concluded that he felt TPWM had acted fairly and reasonably. He concluded TPWM didn't need to calculate the trusts CGT liability, and it was not responsible

for informing them that CGT might have applied subject to withdrawals. He didn't uphold the trust's complaint.

Mrs S on behalf of the trustees of the trust was not in agreement with the investigator's view. She said TPWM's adviser should at any stage been on hand to help the trustees to understand implications in the event of withdrawal. She said they didn't receive any contact from them at any stage, she asked where their duty of care was.

Because the parties are not in agreement, the trustee's complaint has been passed to me, an ombudsman, to look into.

### **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 have independently reviewed the complaint and have arrived at the same outcome as the investigator, for broadly the same reasons. I will explain why.

The crux of the trustees' complaint is that they ought to have been contacted or provided with advice before they decided to make a withdrawal from the trust. They felt that if they were contacted and given advice about the capital gains tax implications of them doing this, they would have instead transferred the investment to the beneficiary. This, they said, would have saved a tax liability.

First, there has been some confusion about which firm is responsible for the matters the trustees have complained about. I can see TPWM has taken responsibility for it, but I can see that this is in relation to any issues the trustees had around the time of when they made the withdrawal and after. This is because the adviser that originally set up the trust, moved to TPWM and when he did, he took a trial commission with him. So, any ongoing relationship between that adviser and the trust, sits with the firm now receiving the commission - TPWM. And the question about whether TPWM's adviser ought to have done something in exchange for that commission, is a question that I will address shortly.

If, however, the trustees have any complaint about what happened when the trust was set up in 2009, then they will need to contact the third party in question directly about that as I think that would sit with them.

Moving on to the trustees' complaint about TPWM and what happened leading up to and when they decided to make a withdrawal, I acknowledge what they are saying. I do appreciate it must be frustrating for them, that they have incurred potentially a higher tax bill for the trust. But I don't think that I can fairly say TPWM were responsible for this happening or that it made any mistakes by not contacting them in this regard.

I've considered who was responsible for warning the trustees about the capital gains tax implications of surrendering the investment bond. I can see the trustees themselves decided to encash the bond to help fund a property purchase for the beneficiary, and no advice was sought by them at that time. Although the adviser from TPWM does receive a legacy or trial commission from the product, that payment in itself does not automatically create an ongoing duty to advise. Without seeing an ongoing advisory agreement or something similar that stipulated that it would do what the trustees wanted it to here, I can't fairly say TPWM had a duty to contact the trustees proactively before the withdrawal.

In these circumstances, on balance, I don't think TPWM were required to provide advice about capital gains tax, rather in the circumstances of this complaint the responsibility for

understanding or seeking advice about the tax consequences rested with the trustees as legal owners of the trust assets.

I appreciate that my decision will be disappointing for the trustees, and I acknowledge the strength of Mrs S's feelings in the submissions provided. But based on everything I have read and the findings I have given, I don't uphold the trustees' complaint.

### **My final decision**

My final decision is that I do not uphold Mrs P and Mrs S as trustees of the S Trust's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P and Mrs S of the S Trust to accept or reject my decision before 3 December 2025.

Mark Richardson  
**Ombudsman**