

complaint

Mr and Mrs T have complained about Financial Administration Services Limited (“Fidelity”) because of delays in transferring some of their investments to another investment platform. Because of the delays, the investments were not in place with the new platform in time for them to be sold before the end of the tax year. This meant Mr and Mrs T did not make full use of their capital gains tax (CGT) allowances in that tax year.

There were delays in transferring other investments between the same two platforms around the same time. The other platform has accepted responsibility for the investment losses caused by those delays and Mr and Mrs T accepted its offer of compensation. I will not refer to this issue in the remainder of this decision as it appears to have been resolved.

background

Mr and Mrs T wanted to transfer some of their investments held on the Fidelity platform before the end of the 2012/13 tax year. They then intended to sell them. I understand they selected some of their most profitable investments so they could make use of their CGT allowances for the tax year and that this is something they did regularly.

Mr and Mrs T say they were dissatisfied with some of their past dealings with Fidelity and that is why they wanted to transfer the investments to another platform before selling them. They gave their initial instructions to transfer in January 2013. Due to delays, their investments were not set up on the new platform in time to sell them before the end of the tax year as Mr and Mrs T had originally intended.

I previously issued my provisional decision explaining why I considered Mr and Mrs T’s complaint should be partly upheld. An extract is attached and forms part of this decision. I invited both parties to let me have any further comments they wished to make.

Mr and Mrs T did not accept my provisional decision. They do not believe the amount of compensation I suggested reflects their loss and question how I arrived at that figure. They still believe their calculation, based on CGT rates and allowances at the time is the correct way to calculate compensation. They say are likely to use their full CGT allowances in the future and that the allowances are of real value to them.

Mr and Mrs T are also unhappy with some of my comments about what they could have done to mitigate their loss. They also point out that some investments were sold to mitigate Mrs T’s loss to some extent.

Fidelity did not accept my provisional decision either. It says the timeframe it allowed for re-registration was reasonable and that it has already offered compensation for its delays in processing Mr and Mrs T’s transfer.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having reconsidered the case, including all responses to my provisional decision, my conclusions remain as set out previously for essentially the same reasons.

I note what Fidelity has said, but I believe the key issue is that Mr and Mrs T's investments were not set up on the new platform in time for them to be sold before the end of the tax year. I believe this is due mainly to delays by Fidelity, which has already offered compensation for this.

I understand Mr and Mrs T will not be able to benefit from the part of their annual CGT allowances not used in the 2012/13 tax year. But the fact they did not use the allowance does not necessarily mean they will end up paying a higher amount of CGT in the future. That depends on a number of factors that cannot be predicted accurately at this stage.

I accept Mr and Mrs T's point that CGT rates may rise or allowances may fall. But at the same time, rates may fall and allowances may increase. As I have said previously, there are many other issues that will affect whether Mr and Mrs T will pay additional tax. These include when the investments will be sold, their future performance, whether other gains are made in the same tax year, and also whether there are losses against which any gain can be offset. All of these issues are uncertain at this stage.

In the circumstances, I do not believe I can say with any certainty that Mr and Mrs T will end up paying CGT they would not otherwise have paid. And in view of Mr T's occupation and clear understanding of tax issues, he should be in a position to make sure their investments are sold at the most opportune time.

I am aware Mr and Mrs T took some steps to mitigate their loss. The point I was making was that even if any future loss could be calculated, it would not necessarily be fair to hold Fidelity wholly responsible for that if there was something else they could have done as well. That might have included *trying* to stop the transfer process and completing the sales with Fidelity or selling other investments with gains to use up their allowances.

I do not believe I can be sure Mr and Mrs T will eventually end up paying additional CGT because they did not sell the investments they wanted to in the 2012/13 tax year. Or if they do, how much that will be. This means I am not making an award based on a calculation of how much tax I think might be payable in the future.

putting things right

Nonetheless, I can see the delays caused Mr and Mrs T some trouble and upset. The fact Fidelity has already offered some compensation I think shows it accepts this point. I believe the trouble and upset is worse because Mr and Mrs T now face some uncertainty about a possible future tax liability. Compensation of this type is particularly difficult to assess. But in this case, I still believe a substantial award of £500 is fair.

my final decision

My final decision is that I partly uphold this complaint.

If Mr and Mrs T accept my decision, Financial Administration Services Limited must pay them compensation of £500.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs T to accept or reject my decision before 15 May 2015.

Jim Biles
ombudsman

extract from provisional decision:

my provisional findings

To decide what is fair and reasonable in this complaint, I have carefully considered everything Mr and Mrs T and Fidelity have provided.

There is no dispute Fidelity did not deal with its part of the transfer process within a reasonable timescale. The issue I must decide is what represents fair compensation.

I do not accept Fidelity's argument that it should not be held responsible if it did not know Mr and Mrs T planned to sell their investments before the end of the tax year. Regardless of their plans, Fidelity had a responsibility to carry out its part of the transfer in a reasonable timeframe. If this responsibility was not met, I believe it would be fair and reasonable to make an award for any resulting losses – whether or not these could have been foreseen.

The issue I currently have with making an award for the losses Mr and Mrs T say they have incurred is that I do not believe I can say with any certainty what these might amount to.

I have reviewed Mr and Mrs T's calculation, but that is based on a worst-case scenario. It is also possible the investments will be sold at a time when the loss will be significantly less or when there will be no CGT to pay. The amount of CGT payable depends on a number of factors, including the future performance of the investments, changes to CGT rules (including the tax rate and annual allowance), whether other investments are sold in the same tax year, and also whether other losses exist that can be offset against any gain.

In my view, it is far from certain the failure to transfer the investments before the end of the tax year will actually end up with Mr and Mrs T paying a greater amount of CGT. And that the uncertainty is such that I am unable to make a meaningful calculation of what any future loss might be.

Due to his occupation and clear knowledge of tax issues, Mr T is in a position to know what he can do in future to make sure his investments are sold at the most opportune time from a tax point of view. He was also in a position to know what steps he might have been able to take to mitigate the situation in the 2012/13 tax year.

As the end of the tax year approached and doubts began to appear about whether the transfers would go through when they wanted, Mr and Mrs T could have attempted to stop the transfer process. There is no guarantee this would have succeeded, but if it had they could have sold the investments on the Fidelity platform straight away and before the end of the tax year.

Also, Mr and Mrs T could have considered selling other investments to make use of their CGT allowances instead.

I understand why Mr and Mrs T believe they should not have had to alter their plans because of Fidelity's administrative failings. But at the same time, I do not believe it would necessarily be reasonable to hold Fidelity responsible for all losses (even if these could be accurately calculated) when they did not take reasonable steps to try and mitigate the situation.

While I do not currently propose to make an award in respect of potential losses because Mr and Mrs T did not use their full CGT allowances, I do believe the circumstances described would have caused them some trouble and upset. And this is magnified by the fact they will not know whether the problems they had will mean they have to pay more tax than they would otherwise have done in the future.

Awards of this nature are particularly difficult to assess. But in the circumstances of this case, I currently believe a substantial award of £500 for Mr and Mrs T's trouble and future uncertainty is fair and reasonable.

my provisional decision

My provisional decision is that I currently intend to uphold this complaint in part.

I currently propose to direct Financial Administration Services Limited to pay Mr and Mrs T compensation of £500.