

The complaint

The trustees of trust “T” complain Chase de Vere Independent Financial Advisers Limited (“Chase de Vere”) was at fault in its handling of an instruction to terminate and distribute the proceeds of the trust, causing delay and significant financial loss for which they seek redress. They say Chase de Vere demanded fees which weren’t due and didn’t manage the trust portfolio as it ought to have done.

The trust’s trustees are also its beneficiaries and are also executors of the settlor’s estate. The complaint was originally brought in the name of the estate, but what remains in dispute relates to the trust. It is as trustees that the complainants may bring that complaint, so I’ve amended our records accordingly.

What happened

The trust consists of an investment bond, invested in various underlying investment funds.

On 30 November 2021 the trustees wrote to Chase de Vere saying: *“Please could [the trustees] request that the final few investments held by [the settlor of the trust and the settlor’s wife] be terminated and divided between us”. “Please could you advise what we are required to do to proceed with this.”*

On 13 December 2021 the trustees wrote again saying *“I sent you an email on 30 Nov 21 requesting termination and re-allocation of the final investments of [the trust’s settlor and the settlor’s wife]. Please could you advise what we are required to do to proceed with this.”*

Chase de Vere responded on 23 December 2021 claiming fees due under an agreement of June 2017 – of which it provided a copy - had been unpaid since 2018. It said that since raising this with the trustees in December 2020 they had continued to reject this notion and to maintain that all fees due had been settled. I note that the reply included the following:

“Firstly, in terms of acting for you in any capacity relating to this I think we need to ensure we are on an appropriate commercial footing... Once providers were informed of their [the settlor and settlor’s wife] passing away, all fee payments ceased as is standard practice...

Last December... I detailed the fee position since 2018. You believe that the fees in question were settled... I explained that they were not and my attempts to discuss this further have not got us any closer towards resolving this issue... If we are to act on the trustees behalf and, in terms of what you have asked in your most recent email, I do consider that this is an advice point in which case we must do so on an appropriate commercial basis. This is alongside the pure administrative issues that might come after that.

In terms of the advisory matters I am referring to, I want to ensure you have given appropriate consideration to how the Trust as an entity might be an appropriate vehicle for you... to continue with, the advantages and potential pitfalls of this, and also of breaking it up (which might be done in a range of different ways)...

I hope we can agree to move forward on this.”

The trust's reply on 16 January 2022 included:

"Please... provide the paperwork on how the fees were invoiced and paid on the trust; evidence they were not invoiced for 2017 to 2019; and most importantly that they were not paid by our parents for those years. I am sure we can then resolve this.

We don't think that we want to continue with either the Trust or the [other investments]; our intention is to stop them and divide up the proceeds. If there are compelling reasons for a different course of action then we would be open to your ideas, from which we would then decide if we wish to proceed and then pay for your service. We would expect the administration of stopping them and passing on the proceeds would all be part of the overall service for the investments."

The trust's further reply on 23 February 2022 included:

"...our default option remains to surrender the bond... liquidate the assets and distribute the proceeds to the beneficiaries. As both were set up for IHT purposes and in the case of the former to provide an income for [the settlor] we do not see that there can be too many advantages to us continuing with them.

Taking this stance, if you think that there are significant advantages to us continuing with the trust we are prepared to pay a proportionate fee to hear them. The same goes for different ways of breaking it up beyond just liquidating the assets and distributing. Please let us know whether you think that this is the case, and what you would charge us when we would receive the advice (we started correspondence on this on 30 November 2021 and believe it is now our right to reach a quick conclusion). Otherwise we will just proceed with our default course of action."

On 20 April 2022 the trust noted that it had not had a reply to its earlier messages and wrote to Chase de Vere saying *"Please now take the following written instructions from us" to "terminate the trust and divide the investments 50%/50% between the beneficiaries".* They said: *"We will await confirmation that these instructions have been actioned so that we can advise further on where we would like the proceeds to be sent."*

On 27 May 2022 the trust asked Chase de Vere to act on its April 2022 instructions *"without delay"* and said they were *"concerned that further delays will result in losses to the investments as a result of an adverse movement in the market."* They also said: *"Please also include an estimate of your costs to undertake the administration (we note that your hourly rate for advice is £250 but there is no mention of the administration)."*

Chase de Vere replied on 12 August 2022 referring to the existing agreement for ongoing service to the trust but saying it wouldn't do more work before the fee dispute was resolved. In reply the trust referred back to previous correspondence requesting evidence of unpaid fees, and the trust asked Chase de Vere to carry out their instructions in the meantime. On 12 November 2022 the trust made their complaint to Chase de Vere, including about it not following their instructions to surrender the bond.

The trustees say Chase de Vere failed to carry out their instructions, causing a loss of £65,975. This is the difference between the value of the portfolio on the date of the November 2021 instruction and the value it had in February 2023 when the trust's investments were transferred to trust beneficiaries. The trust investments were not all surrendered in 2023 but the trustees say this was a choice the beneficiaries made, due in part to the fall in value that occurred since 2021.

Chase de Vere says the investments recovered to exceed the 2021 valuation after 2023,

and at a time when the investments were still being held by the beneficiaries - so in its view the beneficiaries suffered no loss because the £65,975 the trustees are claiming was in fact recovered by the beneficiaries by carrying on with the investments.

Chase de Vere has also accepted that it failed to pay sufficient attention to the management of the trust's investments, and it has offered to pay the trustees £8875, being the difference between the return the investments made and the return they might have made had Chase de Vere managed them properly. This difference is the difference in performance between investments Chase de Vere might have sold earlier or that it sold and didn't reinvest, and alternative investments it might have invested in instead. The trustees have indicated they would accept this as redress for the failings identified in the management of the investments.

Chase de Vere also says it will agree not to charge or seek to recover unpaid fees from the trust, that it says amounted to around £23000. It maintains these are fees it was due from the trust for past work that weren't paid, so would otherwise be owed to Chase de Vere. But the trustees claim fees due for past work would've been paid in the past by other trustees who have since passed away, so they dispute that such a figure was unpaid or overdue.

Chase de Vere has also offered to pay £750 for the inconvenience and extra work caused by its errors, being the failure to manage the portfolio properly, failures in its response to the November 2021 instructions given by the trustees and the failure to send proper invoices for the fees it says were properly due but that it is now writing off. The trustees consider £750 to be inadequate for the inconvenience Chase de Vere's errors caused the trustees. Also they consider this redress should reflect inconvenience arising from Chase de Vere seeking fees from them that were never due, even though Chase de Vere has since agreed not to continue to seek these sums from them.

Our investigator didn't think Chase de Vere needed to do more than it had offered. She noted Chase de Vere was no longer seeking the disputed fees. She noted that the trust had ended without the bond being surrendered, so the request to end the trust didn't necessarily amount to a request to surrender the bond or cash in the trust assets. She thought a claim for loss based on the November 2021 value, needed more evidence of a clear instruction from the trust to sell the trust assets (meaning surrendering the bond). She thought redress offered by Chase de Vere for failures in the management of the bond's investment portfolio was fair, as was redress of £750 it had offered for inconvenience arising from its handling of the matter between 2021 and 2023.

The trust didn't agree and made a number of further points, including – in brief summary:

- Chase de Vere didn't handle the request for fee information as it should have done and the fees issue delayed the termination and distribution of the trust proceeds. The fee dispute goes to the heart of the complaint as it was because of this that their instructions weren't actioned.
- A client services agreement was signed by the settlor's wife on 1 June 2017. It refers to a fee that can be paid through a product or direct payment or cheque, but it doesn't say which method was chosen.
- The fee dispute began after the settlor's death in November 2020 – a year before the trustees' instruction to terminate the trust. An email of 15 December 2020 said £23,047.01 of fees were outstanding. The fees issue had been a continuing issue until Chase de Vere agreed to give up its claim to the fees on 5 May 2023 due to an admitted lack of evidence.
- Their instructions to terminate the trust and divide and distribute the trust proceeds to the trust beneficiaries were made clearly and persistently - without provisos or seeking

alternatives - between 30 November 2021 and 22 November 2022 but didn't elicit meaningful communication from Chase de Vere or the execution of the instructions. A total of eight clear written instructions were sent to Chase de Vere.

- Email exchanges with Chase de Vere on the termination and distribution of the trust were sent between 30 November 2021 and 21 November 2022. There is regular reference in them to the alleged outstanding fees. Further requests were made by letter on 23 February 2022 and 20 April 2022, by email on 27 May 2022 and 12 August 2022 and finally by complaint letter on 21 November 2022. They received only two responses from Chase de Vere prior to the complaint letter.
- Other trustees - the settlor and settlor's wife - had previously dealt with trust matters. The alleged outstanding fees relate to work done during that time. The current remaining trustees knew little. Once the settlor and settlor's wife passed away, these trustees also had no access to the bank records of the settlor or settlor's wife.
- The trustees asked for invoices and evidence these fees were unpaid. They repeatedly tried to get fee information to resolve the issue, but it wasn't acknowledged or given. They asked for more in emails of 16 January 2022, 27 May 2022 and 12 August 2022 alongside their requests to terminate and distribute the proceeds of the trust.
- Chase de Vere didn't respond to their email of 25 February 2021 (stating their belief fees had been paid in full from the trust). Its emails of 23 December 2021 and 7 July 2022 didn't explain how the trust's fees were paid or give evidence of unpaid fees.
- It is obvious Chase de Vere wasn't going to act until the fees were paid. But it made no attempt to give the explanation or evidence the trust reasonably asked for. We now know there was no evidence to give and the alleged outstanding fees were waived for this reason. So Chase de Vere intentionally denied the trustees access to their funds over the sixteen-month period in the hope they would pay fees without receiving information and evidence of non-payment the trustees had requested. Only a formal complaint to Chase de Vere achieved this in March/April 2023. The inaction caused a loss of £65,975.03 on the whole portfolio (as well as the opportunity cost of the use of the money in that time) and £8,875.12 on the failure to manage individual funds.
- The beneficiaries experienced an opportunity cost by not getting access to the proceeds from the assets on 30 November 2021 and the 16 months thereafter. Debts could not be paid off at a time of high interest rates nor could they re-invest the proceeds to meet their personal investment profiles or meet the prevailing market conditions over the sixteen-month period. The assets were left to languish.
- It should be noted that the alleged outstanding fees were advised on in December 2020 while the instruction to terminate/distribute the trust was made on 30 November 2021, a year later. If Chase de Vere had provided a full explanation on the fees as requested and admitted it had no evidence of invoicing to nor non-payment, this issue could have been avoided.
- The trust was set up to provide income to the settlor, so it invested in income generating funds rather than growth funds more suited to the current beneficiaries. If Chase de Vere had responded it would have been quickly established that the trustees intention was to sell the trust assets.

- Not all the trust investments remain in force, but it made no sense in March 2023 to sell them all knowing the overall value had dropped over 7% since November 2021. They didn't wish to realise such a large loss unless they had to. Chase de Vere would have given the same advice. Also they learned that after ending the trust the assets could be split between the beneficiaries for them to make their own individual decisions.
- Chase de Vere's assertion that 'the assets remain invested and since being assigned continue to rise in value' is sweeping and what happened to the value since March 2023 is irrelevant here.
- Chase de Vere and the estate agreed in principle that £8,875.12 was payable for the 'lack of management of funds' (specifically two funds that should have been sold and reinvested and proceeds of a sold fund that should have been invested). Two different areas of redress are being sought: the drop in the overall value of the portfolio, being £65,975.03, and the losses due to the lack of management.

As this matter couldn't be resolved informally, it has been passed 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.

Having done so, I've arrived at the same conclusion as our investigator. I'll explain my reasoning.

In my view Chase de Vere's December 2021 reply made clear that it wouldn't be acting for the trust "in any capacity" without agreement on how it would be paid for its work, including agreement over the disputed fees it was seeking for past work. So I think it did reply to the trust's request. The import and implications of that reply – that Chase de Vere wouldn't be doing anything more until the fees issue was resolved – was plain in my view. Indeed the trustees agree this was why Chase de Vere didn't act on their instruction.

There was already an agreement in place governing Chase de Vere's work for the trust and the fees it was due. Its reply implicitly suggested this agreement wasn't working, given the dispute over past fees for work governed by that agreement. In my view Chase de Vere could have made this point explicit – by giving formal notice that it was ending the existing agreement and would need a new one, for example – but I think it did make sufficiently clear that it wasn't intending to act on the trust's request until the fees issue was resolved.

I accept that if Chase de Vere was also at the same time carrying out work for the trustees on related matters, like probate queries, this may have run counter to its message. But I still think the message was sufficiently clear.

I also accept that if Chase de Vere was wrong about past fees being due, then it was also wrong to decide not to act on the request it was given. But even in that scenario I don't think the trust could reasonably claim for the fall in value in the portfolio between November 2021 and February 2023. In my view Chase de Vere made clear in December 2021 that it wouldn't be acting for the trust without resolution of the fees issue. So the trust had time from that point on to take alternative steps if it wanted the bond to be cashed in – for example by instructing another adviser or giving instructions to the bond provider direct. It follows that I don't agree with what's been said about the trust's funds being held hostage, and I don't support the claim for consequential loss or loss of opportunity arising from these funds not having been drawn from the bond earlier.

I accept that the fees issue might have been resolved more quickly had Chase de Vere said more about this – for example, by admitting it hadn't sent invoices for the fees, or by setting out details of what payments had been made from the investments to Chase de Vere in the past and giving details of the dates when these stopped. That said, it's not obvious to me that any of this would've led to an agreement being reached with Chase de Vere about the past fees such that Chase de Vere would've agreed to carry on acting for the trust at some earlier point. But in any event, it seems to me that on learning that Chase de Vere wouldn't act until the fees issue was settled, the trust was in a position to take alternative steps to close the bond if that is what the trust was determined to do. So I'm not persuaded the claim for the value of the bond in November 2021, compared to the value in 2023, should succeed.

I note in passing that the actual value became higher later in any event – and also that surrendering the bond would've had tax consequences so that the net value obtained after tax might have been even lower than the actual value the bond later recovered to. But my reasons for concluding that I cannot support the trust's claim for an additional £65,000 are those I've already given above.

The November 2021 request didn't specifically say that the bond was to be surrendered, so I think the sensible action if acting on that request would've been to clarify how the trustees wanted to bring the trust to an end. Also given the significant disadvantages that could arise from a tax point of view if the bond were surrendered, the appropriate course would've been to discuss these with the trustees too. But in the absence of clarification or more discussion, I tend to agree with the trustees that the action the November 2021 request was asking for would be the closing of the bond, meaning its surrender. I note in later requests the trustees were open to alternative courses but in April 2022 the instruction was clearly to cash in the bond – because it refers to sending the proceeds somewhere. But given my view above that Chase de Vere made clear it wouldn't be acting on instructions until the fees issue was resolved, this point doesn't change my conclusion about the trust's claim for the fall in the portfolio value between November 2021 and 2023.

Chase de Vere says its fees were paid by the settlor or his wife direct, not by the trust, as this reduced the value of their estates and saved a potential 40% inheritance tax. It says it failed to invoice for fees and these fees weren't paid. The trust says the settlor's wife was paying the fees by cheque but couldn't do so from 2019 so they reverted at that point to paying fees direct from the trust.

I don't think the fact that Chase de Vere is no longer seeking the fees means they were paid or weren't due. The trust hasn't sent anything to show the fees that were due were paid from the trust, like the trustees say would've happened. In saying this I don't overlook what has been said about access to bank records. But I find it hard to see how fees could have been paid without there being a request for them or a calculation from Chase de Vere as to how much was due. So it seems to me likely that the failure to invoice for the fees also led to those fees not being paid. I think this more likely than Chase de Vere continuing to request the payment of fees that had actually already been paid. As the fees are now being written off, I note in passing that this means the trust gained over £20,000 from Chase de Vere's error of not invoicing for the fees. I don't see grounds on which I could fairly award more redress than that for such an error.

It is agreed that Chase de Vere failed in its management of certain aspects of the trust's portfolio too, with the result that the trust lost £8125.12. Chase de Vere also offered £750 for the inconvenience its failings caused the trustees. I agree it should also compensate them for this inconvenience.

So I uphold the complaint in part.

Before closing I'd like to thank the trustees of the T trust for their prompt and courteous responses to all our enquiries and assessments throughout our consideration of this matter. It has greatly assisted our investigation of these matters.

Putting things right

To put things right, Chase de Vere Independent Financial Advisers Limited should pay the trustees of the T trust £8,125.12 for loss arising from errors in its management of the trust's portfolio. It should pay simple interest on this sum at the gross rate of 8% from 14 July 2023 (the date the loss was assessed) until the date the redress is paid.

Chase de Vere Independent Financial Advisers Limited should also pay the trustees of the T trust £750 for the inconvenience its failings caused them.

Chase de Vere Independent Financial Advisers Limited should also waive the fees it has agreed to waive for the T trust.

My final decision

For the reasons I've given and in light of all I've said above, I uphold the complaint in part.

Chase de Vere Independent Financial Advisers Limited should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask the trustees of the T trust to accept or reject my decision before 12 January 2025.

Richard Sheridan
Ombudsman