

complaint

Mrs T has complained about the delays she has experienced in transferring an ISA and funds to Interactive Investor Trading Limited and the errors it made during the transfer. She also complains that she was unable to get an accurate breakdown of what had happened to her funds.

background

Mrs T arranged for the transfer of her investments worth in excess of £300,000 from another investment business to Interactive in January 2014. She had a general trading account and an ISA account each containing a number of funds. The final fund was transferred in late January 2015. Interactive has explained that it faced a significant increase in transfer activity in this period and so it did not meet its advised timescale of six to eight weeks.

It has explained that it was in regular contact with the transferring business and that five of the fund holdings which had been included in the original transfer request were subsequently cancelled. A further fund could not be transferred. In addition to the delays in effecting the transfers Interactive transferred two of the funds to the general account rather than the ISA account due to administrative error. Mrs T says that due to the lack of a clear audit trail she was unable to clearly identify which funds had been transferred to which account and when.

When Mrs T complained the business offered her £50 which it subsequently increased to £200. Mrs T, who is represented by her husband, brought her complaint to this service. She said the delay has caused her to suffer an additional loss through a missed investment opportunity.

The complaint was reviewed by one of our adjudicators, who recommended that it be upheld in part. In summary, he arranged for Interactive Investor to send Mrs T a full breakdown of the transfers. He also suggested that the payment for trouble and upset be increased to £250. He asked the business if it was prepared to agree to a further award for the lost investment opportunity, but it refused.

Mr T, on behalf of Mrs T, was not prepared to accept the offer put forward and made the following submissions.

He did not believe the terms and conditions of the transfer were drawn to his wife's attention and the business cannot rely on them to prevent her from claiming lost investment opportunity. Further he believes the payment for trouble and upset is derisory as it does not reflect the actual trouble and upset these problems caused.

In my provisional decision I note that it was accepted that Interactive took an inordinate length of time to make the transfers and that it made errors in the allocating the funds to the correct account. It also failed to provide a clear audit trail until March 2015 and only then after the adjudicator intervened. I considered it has provided a very poor service. It has left Mrs T with limited or no access to her funds for a lengthy period of time and for that I considered compensation was due. I considered that £250 was fair and reasonable.

I noted that Mrs T had not suffered any direct financial loss on the transfer. However, she considered she had suffered loss due to a lost investment opportunity. Interactive said that under its terms and conditions it is not responsible for any potential losses due to the

transfer process, even where it has been substantially delayed. Mr T on his wife's behalf took a different view. These are as follows:

Interactive said:

"In their submission, Mr T has referred to being unable to trade while the stock had been wrongly allocated. On 5 February 2015 Mrs T sold 2 holdings of JO Hambro UK Equity Income fund- B class units and Y class units. The Y class units were sold for £45,766.48 and had been available to trade on Mrs T's ISA since 26 August 2014. The B class units were sold for £26,102.31 and had been available to trade on the ISA since 20 January 2015. While we appreciate Mrs T had cause for uncertainty due to the above 2 lines of stock which had been wrongly allocated, we would not make an offer of compensation based on the investment decisions taken by the client following the transfer".

Mr T said:

"The misallocation caused real loss. [Mrs T] could not trade with any of her funds held by [Interactive] while they were wrongly allocated. Had she done so she risked selling a fund that should be in her trading account and incurring CGT.

When the position appeared to be sorted out she sold £71,868 of JOHCM UK Equity High Income on 5 February 2015 and bought £75,000 of Woodford Equity Income on 13 February. (We felt reasonably sure that at least that amount was in her ISA. The delay in the purchase was because it is not possible - or at least we have not found out how- to arrange for sale proceeds to be automatically invested in another fund so we had to wait until there were cleared funds.) I cannot construct the precise figures but funds were credited by [Interactive] as received on 11 August 2014 and from then until 5 February the difference in performance between JOHCM UK Equity High Income and Woodford Equity Income was in the region of 11%. This would mean that demonstrable loss exceeded £8000".

I noted that if this was matter solely of delay, even if that delay was substantial, I would not be minded to uphold Mrs T's claim for lost investment opportunity. I would consider the agreed terms and conditions of the transfer would prevent me from considering such losses. However, the issue was exacerbated by the two additional and significant factors. Firstly, Mrs T's funds were misallocated and a disposal of the incorrect funds could have triggered an unwanted tax bill. Secondly, she did not have a clear audit trail of the transfer of the various funds so it was not clear to her what money she had where, and whether or how she could make a disposal. It was only after the adjudicator requested a complete audit trail did Interactive provide one.

Often in cases of lost investment opportunity it is difficult to establish with any certainty what the consumer would have done and whether they have taken advantage of the benefit of hindsight. However, Mrs T did change funds as soon as she believed she was in a position to do so. I considered that Interactive should recompense her for the loss brought about by its allocation errors and the lack of transparency it provided regarding her investments. Normally Interactive would effect transfers within six to eight weeks, but I recognised that it faced a high level of demand so they were taking longer. One of the funds sold was available for trading from 26 August 2014 and the other from 20 January 2015. For that reason I considered it is reasonable to calculate any loss on the basis that Mrs T reinvested her money on those dates.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mrs T has accepted my provisional findings but interactive investor did not agree and said that it had correctly allocated the Y Accumulation units to Mrs T's ISA. As such the sale of this investment would therefore not have triggered a tax bill. Mrs T should have been aware of her investments held within her accounts with her previous broker and would therefore have been able to acknowledge the correct allocation of these units.

It also pointed out that Mrs T pays for an execution-only share dealing service and she is responsible for her investment decisions and for managing her account and investments.

On the issue of compensation it said that Mrs T had access to sell her holding in JOHCM UK Equity Income Y Accumulation within her ISA from 26 August 2014 and could therefore have done so at any time. The business doesn't consider itself responsible for any movement in the value of this investment or the value of any subsequent reinvestment of the proceeds raised through a sale.

It said that the proposed method of compensation didn't take account of the fact Mrs T would needed to have sold her holding in JOHCM UK Equity Income B Accumulation prior to 25 January 2015 in order to reinvest the proceeds on this date. It also said that she benefitted from the delays due to market fluctuations. It suggested that this showed that the prices received and the number of units purchased was dictated by Mrs T's decisions and market forces and is not the responsibility of Interactive Investor.

The business accepted it didn't provide a clear audit trail this by way of a written response to Mrs T until 31 March 2015, but said this information was available to Mrs T on her account statement. However, the business recognised the high value of Mrs T's transfer and the resultant concern caused and increased its offer of settlement to £350.

I invited Mr T to comment on his wife's behalf and he reiterated his wife's claim that she had been unable to trade due to the incorrect allocation by the business. He said that both the Y and B class stock were received by the business on 26 August 2014. However, the B class stock was not correctly allocated until 20 January 2015. Following the business's rejection of my provisional decision he suggested an alternative calculation.

I am satisfied that the business failed Mrs T in its handling of her transfer. It's clear that the parties will not be able to agree an appropriate level of compensation and I recognise that it can be calculated in a variety of ways. However, I consider that it is now time to bring this matter to a conclusion and I believe the compensation I proposed in my provisional decision was fair and so I propose to leave it unaltered.

my final decision

My final decision is that I uphold this complaint and I direct Interactive Investor Trading Limited to pay Mrs T compensation of £250 and to recompense her for the loss she suffered calculated as follows:

- The difference between the value of £45,766.48 invested in Woodford Equity Income on 1 September 2014 and 13 February 2015.
- The difference between the value of £26,102.31 invested in Woodford Equity Income on 25 January 2015 and 13 February 2015

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs T to accept or reject my decision before 22 February 2016.

Ivor Graham
ombudsman