DRN-3173902

The complaint

Mr L complains that Interactive Investor Services Limited (IISL) failed to keep to an agreement they'd made about the rate he'd be charged for certain trades in his share dealing account.

What happened

Mr L had some large holdings in a particular share I'll call A. The share was denominated in another currency. When Mr L traded in this stock, IISL charged him an FX margin rate fee, which was calculated as a percentage of the value of the trade. That percentage became lower, the larger the trade.

Mr L wanted to sell a large number of A shares, but didn't want to execute one large transaction, so as to enable him to achieve the best price in the market overall. But doing this meant he would pay a higher FX margin rate on the smaller trades, than would have applied to one large trade. He spoke to IISL, who wrote to him in July 2019 saying:

"If you receive multiple fills on your Australian orders which have different margin rates on, we will credit your trading account with the difference for the rate you would have received had the order been placed in full, for example: You place a £50,000 order - Split into 2 lines of fill, each of them carrying an FX margin of 1.25%, we would be willing to credit your trading account with the cash difference to take you to a 1% FX margin on your trade."

Mr L proceeded to place various trades – selling some of his existing A shares, as well as buying more – and a few months later got in touch with IISL to ask about the agreed cash rebate. IISL agreed to pay the rebate for some trades, but went on to say in an email in October 2019:

"Moving forward our position will be that we will accommodate sales only of your remaining [A] holding. Any further purchases in [A] we would not accommodate any rebate in FX as when we originally agreed this arrangement for you we were of the understanding that you were looking to sell out of this holding and did not want to be exposed to a large FX charge."

Mr L continued to buy and sell A shares. In 2020 he again contacted IISL to request rebates on some of his FX margin rate charges. IISL declined, and Mr L complained. IISL didn't uphold his complaint, and said it had only ever agreed to rebate fees in order to allow Mr L to sell his total A holding in tranches in July 2019. It said it hadn't ever intended to offer an ongoing reduction to the fees it charged Mr L for transacting in this particular stock, as Mr L seemed to believe. It said:

"The original agreement was that we would accommodate one sell out using one FX Charge for your then-current holding amount. It clearly stated that we would not accommodate any further purchases in [A] as the original agreement was made on the basis that you were looking to sell out of [A]. Going forward, if you still wish to sell out of [A], as a goodwill gesture we are still prepared to complete one final sell out so you which means you would only receive one FX Charge. However, this would only be for its current stock amount of 117,000."

Mr L brought his complaint to our service, and one of our investigators looked into things. He thought IISL's initial email in July 2019 was unclear. He said it was reasonable for Mr L to understand from that email he'd be rebated on any trades in A, until IISL clarified things in October 2019. He said IISL should rebate any trades Mr L placed between July and October 2019, and pay him £100 to say sorry.

IISL said it would pay the £100 compensation. It didn't agree it should rebate fees on all Mr L's trades during those dates – but identified six trades where it said it would do so.

Mr L didn't agree with our investigator or IISL's offer. He said IISL should honour its original offer which was to rebate all trades in A.

The matter was passed to me to decide, and I wrote to the parties to set out my initial thoughts. I said IISL should rebate those trades where Mr L carried out multiple sell orders in A on the same day, but didn't think it was fair for it to apply the rebate more widely to any other individual trades. IISL agreed to pay Mr L for two additional trades which fell within those criteria, in addition to the trades it had offered to rebate after the investigator's view. Mr L maintained that a fair outcome would be for IISL to make payments against all the trades he carried out in the stock before he complained in 2020.

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.

It's not in dispute that the rebates Mr L is asking for aren't and weren't part of the contractual arrangement he had with IISL. Mr L says that it offered to charge him differently for trades in this stock, without the restrictions it latterly tried to add, and it should stand by that.

IISL on the other hand says it only ever intended its offer as a one-off, to allow Mr L to effectively place one big trade in smaller chunks without paying a higher FX margin rate. It says it didn't intend Mr L to have a bespoke charging arrangement for this stock indefinitely.

Even if that was IISL's intention, I don't think that's what it communicated to Mr L. And I don't think it would be fair or reasonable for it to retrospectively change the terms of an agreement it reached with Mr L. But I don't think it would be fair to interpret IISL's offer as broadly as Mr L does, either.

Where this arrangement for how Mr L would be charged FX margin wasn't contractual, I don't think it's something IISL ought fairly to be held to indefinitely. If it changes its mind and no longer wants to offer it, that's a decision its free to make. But as I've said I think it would be fair for it to honour the agreement it made until it told Mr L it was no longer willing to charge him in that way any longer.

IISL says the offer was intended to cover a one-off sale of Mr L's holdings in A. But its email in July 2019 isn't as specific as that. It simply says for orders in A, if Mr L gets multiple fills with different margin rates, it will treat them as if they were one large order and rebate Mr L as if he'd paid FX margin accordingly. I think it was fair and reasonable for Mr L to take from this that this wasn't limited to one order or set of orders in the stock. And to the extent IISL clarified matters in October 2019, it said this offer would apply only to sell orders in A attributable to the amount of shares Mr L held at that time. Again though I don't think IISL made it clear Mr L needed to carry out these sells in one go, or in any particular timeframe.

Where that ambiguity exists I think it's fair and reasonable for it to be resolved in Mr L's favour. I therefore think IISL should look at all Mr L's trades in A since July 2019 and apply the rebate where applicable. That doesn't, however, mean I think all Mr L's trades in A ought fairly to be charged FX margin in the way described in IISL's July 2019 email.

There is, in my view, an understanding this approach is to account for one large order being split into smaller ones. While I don't think it was clear enough that IISL meant Mr L's whole holding in one go, I also don't think it would be fair for Mr L to take from that email this meant he could trade as he saw fit in A, and all the transactions would be charged a lower FX margin rate.

Mr L has traded at various times in various sizes in A between July 2019 and when he complained in 2020. Some of those trades (for which he asks for rebates) were single transactions with no other buys or sells particularly soon before or after. I don't think it's reasonable for Mr L to see these as "multiple fills" on a large order, and therefore to have expected IISL to treat them as part of a large order for the purposes of the margin rate.

I don't know Mr L's thought processes when placing his trades. But I think it would be reasonable to say any occasions on which he placed multiple sell orders on the same day were multiple fills which could have been seen as part of a larger order. Those trades placed on days with no other orders in A wouldn't meet that definition, in my view.

So given the way IISL presented its offer in July 2019 and subsequently clarified it, I think it would be fair for Mr L to be rebated on those trades where multiple sells were placed on the same day, and not on any other trades. And further, that the overall number of shares Mr L could sell and be rebated for in this way was capped at his holding in October 2019.

I also agree with our investigator that failing to carry out its original agreement, and causing Mr L to repeatedly question the arrangement, was inconvenient and upsetting for him. I think £100 is fair compensation for that.

Putting things right

In order to put things right IISL should:

- Identify any trades between July 2019 and August 2020 where Mr L sold shares in A more than once on the same day ("qualifying trades").

- Calculate the difference between the amount of FX margin rate Mr L paid, and how much he'd have paid if all the trades on a given day had been one larger order.

- Pay Mr L that difference.

- Establish how many shares in A Mr L held on the date it sent him the October 2019 email referred to above ("the holding").

- If the qualifying trades Mr L placed after IISL's email in October 2019 comprise more shares than the holding, IISL may limit its calculation to those trades up to and including the one in which that number of shares was sold.

- Pay Mr L £100.

My final decision

For the reasons I've given my decision is that Interactive Investor Services Limited should pay Mr L compensation as set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr L to accept or reject my decision before 20 December 2022.

Luke Gordon
Ombudsman