

The complaint

Mr S complains that Halifax Share Dealing Limited (“HSDL”) didn’t get the price it should have done when processing the sale of his shares.

What happened

Mr S had an execution only share dealing account with HSDL. In March 2020 he attempted to get online access to his account to manage his Diverse Income Trust shares – the only holding he had with HSDL. on 11 June 2011 he telephoned HSDL about online access. It was during this call he was made aware that as he was an overseas resident, he couldn’t get online access to manage his account.

Mr S instructed HSDL to sell his shares during that call but the instruction was given after the market had closed so his order was recorded as a delayed order for sale at the “best price” available when the market reopened the next day.

The sale was processed at 08.21 am on 12 June 2020 at a price of 73.58 pence per share. Mr S received a total of £69,635 for his shares. The price Mr S obtained for his shares was based on a price poll of all connected market makers in accordance with the execution policy.

HSDL didn’t uphold Mr S’s complaint and so he referred it to our service and one of our investigators considered it. She explained that as Mr S had instructed HSDL to sell his shares after the market had closed on 11 June 2020 it had sold at the next available opportunity the following day. She said the price was a valid price based on a price poll of all connected market makers, in line with HSDL’s terms and conditions.

The investigator explained that as the trade was above the normal market size of 5000 shares – set by the London Stock Exchange, not HSDL – and that market makers could make their own price rather than use the touch price. She also explained that as Mr S hadn’t instructed a limit order HSDL had sold at ‘best price’.

Mr S didn’t agree with the investigator. He said he had been trying to sell his one holding since March 2020 and at no time had HSDL said he wasn’t entitled to online dealing before the 11 June 2021 call. He said that his call on 11 June 2020 was to get such access so he could sell, but when he became aware that he couldn’t do this he decided to sell his shares then and there and close his account. He said because the customer adviser took so long to deal with things the market had closed before his trade could go ahead.

Mr S said he should have been warned that ‘best price’ could be based on one market maker making a low bid and if he had been, he wouldn’t have gone ahead. The investigator said that the order was executed based on Mr S’s instruction and on the basis that Mr S had taken professional advice if he was unsure as to what course of action was suitable.

The matter was referred to me for review and I issued a provisional decision upholding the complaint, the findings of which are set out below.

“Mr S has made reference to the fact that the decisions made by our service are based on what is fair and reasonable. However, whilst I acknowledge this, it doesn't mean that we can simply ignore terms and conditions. They are part of the evidence that we need to take account of when making a fair and reasonable decision.

Mr S initially had discussions with HSDL in March 2020 about online access to his shares. This is something that HSDL, in the course of this complaint, has made very clear wasn't available to him as he was resident overseas.

Its terms and conditions include a provision that to be eligible for a share dealing account the client must be resident in the UK or Jersey, Guernsey or the Isle of Man or performing as a crown employee overseas – none of which applied to Mr S.

However, this specifies the criteria for opening an account and Mr S already had an account which he had opened in 2011. There were further provisions of the terms and conditions which affected what he could do resulting from him being resident abroad. Under the heading “Using the service outside the UK” it states:

“6.25 If you are outside the UK (or, except in relation to an ISA, Jersey Guernsey or the Isle of Man) you may only use our service to view information or to close your account, but not to open new accounts, buy investments or make further subscriptions to an existing account. To ensure that we do not breach regulatory requirements in the country you are resident, we may prevent you from using our service to sell investments unless you are closing your account. If you use the account whilst you are located outside the UK (or Jersey, Guernsey or the Isle of Man if applicable) you do so at your own risk and it is your responsibility to check local regulations to make sure it is legal for you to do so.”

On the face of it this provision meant Mr S, as an overseas resident, was only ever going to be able to sell his shares and could do nothing else with his account. And HSDL could decide not to allow a partial sale but only a sale that closed the account.

Turning to the sequence of events in this case from what I have seen Mr S initially emailed HSDL on 10 March 2020 saying he wanted to set up online dealing access but that it had asked for a Personal Reference Number (PRN). He asked if it could send one to him or could this be done over the phone.

HSDL's customer care team responded to Mr S by email the same day explaining that to create online access he would need the PRN sent to him when he opened his account but if he hadn't got this, he could call the contact centre.

Mr S responded to this email and said he had tried to call but as he was calling from (he named the country) and the queue was longer than 20 minutes could someone call back or arrange a time for him to call.

HSDL emailed in response on 13 March 2020 to say as an inbound contact centre it couldn't schedule a call and suggested using the international number or calling on a Saturday when it was quieter.

The next email I have seen is from Mr S to HSDL dated 14 April 2020 in which he refers to having spoken to the contact centre on 10 or 11 March 2020 and that the person he had spoken to had explained to him that his address was in (he named the country) HSDL would need to carry out further ID checks before they could send him a PRN. HSDL have confirmed there was a telephone call on 11 March 2020 but haven't got a recording of that call.

Mr S spoke to HSDL on 11 June 2020 and I have listened to the call. Mr S made clear he wanted online access but couldn't provide a UK address as required by the online application process. He said he had tried to get online access since March.

This led to a discussion and consideration of the terms and conditions relating to online access. When he was satisfied that online access wasn't available to him Mr S then discussed what he could do. He was told he could sell shares but would not be able to buy shares. He then indicated that he wanted to sell the shares, subject to the price being right. He was told the closing price was 78.60 pence per share and instructed HSDL to sell the shares.

I think Mr S was aware this wasn't the price he would necessarily receive as the trade wouldn't take place until the following day. There was some discussion about HSDL being responsible for any drop in the price as the telephone call had been so protracted, although no agreement that it would pay the difference. In any case there was no drop in the price as such because the touch price on 12 June 2020 was higher than on 11 June 2020.

The shares sold for 73.58 pence per share based on a poll of market makers as the size of the sale was above normal. This was something that HSDL didn't have any control over. Mr S has argued that retail clients wouldn't have the necessary understanding to have been aware of how the shares would be valued and that HSDL should have made him aware of this.

Firstly, it wasn't HSDL's actions that led to the value being determined by a poll of market makers. Secondly, I am not satisfied there was any requirement on HSDL to inform him of how his shares might be valued given he had an execution only account. What it had to do was act on his instructions to sell at best price, which is what it did.

In short, I am not persuaded HSDL did anything wrong acting on Mr S's instruction to sell at best price at the next opportunity, which was the day after he authorised the sale of the shares. Mr S has said that HSDL should have told him he could have put a 'floor price' on the price the shares would sell at. However, I am not satisfied it had any obligation to make him aware of this given the account was execution only. It was for him to understand how his account worked and what he could and couldn't do.

I have considered what Mr S has said about wanting to sell his shares since March 2020. This isn't something he specifically raised in his complaint, although he did refer to this in the telephone call of 11 June 2020. I don't think it is possible to properly consider what happened on 11 June 2020 without looking into what led up to the call on that day. And given Mr S has now specifically raised this and HSDL have had the opportunity of considering this point it is appropriate for me to make findings on it.

Mr S's initial email to HSDL on 10 March 2020 referred to wanting online dealing access. I think he probably had considered the possibility of selling at least some of the shares at that time although may not have reached a final decision on that.

Even if he hadn't previously thought about sale of the shares, I am mindful that when he was finally made aware that he couldn't have online access he instructed HSDL to sell the same day. So, I think it is more likely than not that if he had been made aware that he couldn't have online access in March 2020 he would have considered sale of all his shares at that point.

I have considered whether HSDL ought reasonably to have been aware Mr S wasn't entitled to online access and informed of this before June 2020. In his second email to HSDL of 10 March 2020 he referred to calling from a different country. I am not satisfied this alone should have put HSDL on notice he could be resident abroad.

However, there was the subsequent telephone call on 11 March 2020. HSDL don't have a recording of this but Mr S referenced this call in his email of 14 April 2020. He said that he had explained that his address was in (he named the country) and that he was told HSDL would need to carry out further ID checks. I have seen no evidence that would lead me to think Mr S didn't tell HSDL on 11 March 2020 he lived abroad as he stated in the email.

So, I think HSDL were on notice as of 11 March 2020 that Mr S was a non-UK resident. The need for a UK address for online access is a fundamental requirement of the service it provided and something I would expect those talking to clients would be aware of, as the person he spoke to on 11 June 2020 was. So, I can see no reason this wasn't made clear to him in the earlier telephone call.

If Mr S had been made aware that he couldn't get online access on 11 March 2020 the question arises as to what would then have happened. He may well have decided he should sell the shares given this was in effect what he was limited to doing and what he subsequently decided to do on 11 June 2020 when he was made aware that he couldn't have online access.

However, I am not satisfied he would necessarily have been able to sell on 11 March 2020 as I think it is more likely, than not, he would still have needed to provide documents - such as his passport - to HSDL, for it to comply with its Anti Money Laundering (AML) obligations.

He could obviously have instructed the sale of shares at some time between 11 March 2020 and 11 June 2020 but having looked at the share price in that period it was generally lower than on the 11/12 June 2020. I am not satisfied that it is possible to say that Mr S would have obtained a better price for the shares if he had been able to sell before 11 June 2020 and may well have obtained less.

However, I think the subsequent emails and the telephone call on 11 June 2020 wouldn't have taken place as the conversation about online access would already have occurred and he would have known where he stood in March 2020. I think Mr S was caused some small amount of distress and inconvenience to him as a result of the delay in him being made aware he couldn't have online access. I think an award of £100 is appropriate in the circumstances.

I acknowledge this is likely to be disappointing to Mr S, but I can only award him financial loss if I am satisfied that he would have achieved a better price for his shares, and I am not."

I gave both parties the opportunity of responding to my provisional decision. HSDL had nothing further to add but Mr S, in short, made the following points:

- HSDL were aware he resided abroad long before March 2020 as they had been mailing statements to him for many years.
- The share price only dropped below 73.58 pence from 12 March 2020 to 7 April 2020 and was above this from that date until 12 June 2020.

- If he had online share dealing access or the employee had resolved his query quickly enough on 11 June 2020 to seek a sale price that day and the price quoted five pence below the screen price he would not have sold.
- If he had been informed of the risk of a 6% loss by selling one tranche into a closed market he would not have sold.

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 considered the points raised by Mr S and whilst I sympathise with him, I am not persuaded I should change the findings in my provisional decision. I need to make findings on a balance of probabilities – what is more likely, than not – based on the available evidence. There is not enough persuasive evidence available for me to be satisfied it is more likely than not Mr S would have sold his shares for more than he got on 12 June 2020.

I acknowledge that HSDL were sending statements to him abroad, but him being resident abroad didn't become an issue until he tried to get online access in March 2020. It is at this point I think HSDL should have made him aware that he couldn't have online access, as I found in my provisional decision.

I acknowledge what Mr S has said about the share price not dropping below 73.58 pence between 7 April 2020 and 12 June 2020. However, if Mr S had been made aware in March 2020 that he couldn't have online access and was effectively limited to selling the shares I think it is more likely than not he would have decided to sell at that time.

As I said in my provisional decision, he would still have had to provide documents to HSDL for it to comply with its AML obligations, so a sale on 11 March 2020 was unlikely. However, if he had provided the necessary documents and sold the shares before 7 April 2020 he is unlikely to have done better than as at 12 June 2020 – given the price up to 7 April 2020 was below the price that he sold his shares for in June 2020.

If Mr S had sold after 7 April 2020, he still wouldn't have been aware of the NMS in any event. In the circumstances there is no reason to think he wouldn't have gone ahead with placing an order for sale of all the shares in one go rather than in tranches. If he placed an order to sell at 'best price' as in June 2020 then the sale would have gone through the same process.

In other words, there would have been a poll of market makers and a sale at the best price available through that process. Given the sale would again have been subject to the NMS there is no way of knowing what price the sale would have achieved or that this would necessarily have been better than what was obtained on 12 June 2020.

I acknowledge that Mr S could have chosen to place an order to sell at a specific price rather than at best price. If he had done so, either that price would have been obtained, or if it wasn't there would have been a reasonable possibility that in discussing why his order hadn't been successful Mr S would have become aware of the issue over the NMS and would subsequently have sold in tranches.

However, to make a finding that he would have placed an order to sell at a specific price I would have to be satisfied it is more likely than not he would have done so. Given he could have placed such an order on 11 June 2020 but chose to place an order at best price instead, there is no reason to think he wouldn't have placed the same order in an earlier sale. So, I can't say it is more likely than not he would have placed an order to sell at a

specific price.

Mr S has said that if he had online access or the employee had resolved matters quickly on 11 June 2020 and he had been quoted a price five pence below the screen price, he would not have sold.

Firstly, he wasn't entitled to online access for the reasons I have already explained in my provisional decision.

Secondly, I am not satisfied the employee delayed matters on 11 June 2020. I think they did the best they could to clarify issues raised by Mr S in the call, and this led to his order being placed after the market had closed.

Thirdly, there is no reason to think that he wouldn't still have placed an order to sell at best price, as he would not have been aware that the size of his order could lead to a lower price than the screen price he could see. If he had placed an order at best price this would have been actioned in the same way as it was on 12 June 2020, without any forewarning to him as to the price.

Mr S has also said that if he had been warned he could suffer a 6% loss by selling in one tranche, he would not have gone ahead. I accept he would not have sold if he had been aware that he would get significantly less than what he expected. However, HSDL had no way of knowing what he would get before the order was placed and once it had been placed HSDL was obliged to sell at best price as per the order. It was not required to go back to him beforehand to discuss the price that had been obtained.

Putting things right

I think Mr S was caused some distress and inconvenience because of the delay in him being made aware he couldn't have online access. I think an award of £100 is appropriate in the circumstances.

My final decision

I uphold this complaint for the reasons set out in my provisional decision and above. Halifax Share Dealing Limited must pay Mr S £100 for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 20 April 2022.

Philip Gibbons
Ombudsman