

The complaint

Mr W complains about Parkgate FS LLP.

He's unhappy about the time it took to complete his ISA transfer and purchase shares using cash. He's also unhappy that he couldn't purchase more shares.

What happened

One of our investigators considered the complaint and thought it should be upheld. In summary, he said:

- As the IFA, Parkgate failed to submit the correct transfer request on 25 March 2020 and that caused delays resulting in financial loss to Mr W.
- If the correct instructions had been submitted, it's more likely (than not) that the transfer would've completed within 30 days, in line with HMRC guidance.
- The 30 days was likely to start from 22 April 2020, which is roughly the date the transferor and transferee accepted the request. So, the transfer ought reasonably to have been completed by 22 May 2020, and the Airbus shares purchased (as Mr W had always intended) one working day later, on 25 May 2020.
- Several reasonable assumptions were made – based on the actual chronology – in support of the hypothetical timeline:
 - On 25 March 2020, Parkgate ought reasonably to have submitted the (correct) partial transfer request, as opposed to the incorrect request.
 - On 27 March 2020, Mr W was likely to have received the relevant documents (in the post) to sign and return.
 - By 3 April 2020, the documents were likely to have been received by Parkgate, using a five-day turnaround.
 - The relevant documents were likely to have been sent to the transferee the same day and received on 7 April 2020.
 - On 10 April 2020, the transferee was likely to have scanned the application as it took three working days to do this.
 - On 16 April 2020, the transferor was likely to have received the request, and in due course on 20 April 2020 scan it on to its system.
 - On 22 April 2020, based on the actual time it took to respond, the transferor is likely to have actioned the form.
 - The 30 calendar days is likely to have started from 22 April 2020.
 - Although there isn't a definitive date when the transfer request was 'accepted' by the transferee, the cash was transferred on 9 June 2020. Assuming that to be the date of acceptance, the correct transfer in this instance ought reasonably to have been completed by 22 May 2020.
 - As the cash was used to purchase the Airbus shares one working day after it was received by the transferee, the shares were likely to have been purchased on 25 May 2020.
 - Although the actual transfer happened sooner, there's no guarantee that it would've happened within the same timescale and he has therefore taken this into account.
- The £2,800 offered to make up for the shortfall of units – on the basis that other

providers also matched the contribution – is unreasonable as it doesn't meet the actual number of additional Airbus shares Mr W would've been able to purchase.

- The £200 compensation offered for the distress and inconvenience is broadly fair and reasonable.
- In terms of the loss calculation, Parkgate should do the following:
 - Calculate how many 'additional' Airbus shares Mr W could've purchased on 25 May 2020.
 - Calculate how much cash would've been generated from the sale of the additional shares on 16 September 2020.
 - Pay Mr W the loss, with 8% simple interest from the date of disinvestment (16 September 2020) to the date of payment.

Parkgate disagreed with the investigator's view and asked for an ombudsman's decision. In summary, it said:

- Mr W hadn't wished to include it in the complaint involving the transferor and transferee. The evidence shows that the two businesses fell short of their duty towards Mr W.
- Mr W was encouraged by our service to include it in the complaint, because it was easy to blame, rather than go after two large businesses.
- The investigator referred to HMRC guidance, but its rules and conduct is based on COBS 1 and COBS 2.
- It only ever tried to assist Mr W with his objective which he couldn't achieve through the transferor. It's now being penalised for this, even though it hadn't advised Mr W to pursue this course of action and didn't charge for the assistance provided.
- Mr W also didn't know that funds had been suspended. If it had done nothing, what would've happened? Mr W wasn't aware of an alternative route and risked losing his ISA status and being subject to capital gains tax (CGT). Surely, during the covid-19 lockdown, leaving Mr W to find a solution himself would've added more time and effort to the process.
- It *may* have made one mistake in not identifying the transfer as a partial transfer – as it wasn't informed of a suspended fund – but that didn't lead to a two-month delay. The delays were down to the transferor and transferee having two different processes.
- It has contacted the (two) businesses and Mr W in excess of 20 times during this process, which is substantially more time than it should be. It initiated more contact than the businesses did.
- At no time did the transferor notify it – whilst asking for valuations before the process started – that funds had been suspended which is a material failure on that business's part.
- It can't be held responsible for investments going up or down, especially in relation to stocks it didn't and couldn't recommend because it wasn't authorised to do so.
- It, like the other two businesses, has a reasonable time for executing transactions and treating customers fairly. The investigator appears to suggest that it has the same level of resources as the other two businesses such that it should be able to provide a better and faster service.
- The above points notwithstanding, it's possible that all three institutions did their best to provide a positive outcome for Mr W during unprecedented times. The Covid-19 lockdown, staffing and IT issues compounded the already complicated and labour intensive process.
- Mr W didn't lose money as such but didn't make as much gain despite its best efforts.

Our investigator having considered the issues wasn't persuaded to change his mind. In short, he said:

- Mr W referred a complaint to our service involving all three parties involved in the transfer process.
- There's no dispute about Parkgate's obligation to follow COBS, but we're also able to have regard to the HMRC ISA transfer timescales.

As no agreement has been reached, the matter has been passed to me for review.

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 agree with the investigator's conclusion for much the same reasons. I'm going to uphold this complaint.

On the face of the evidence, and on balance, despite what Parkgate says, I don't think it behaved reasonably. In other words, I'm satisfied that on 25 March 2020, instead of submitting a 'partial transfer request' it erroneously submitted a full cash transfer which wasn't possible to complete owing to some suspended funds.

On balance, I think that had Parkgate not made this error, the transfer was more likely (than not) to have completed by 22 May 2020, enabling Mr W to purchase Airbus shares sooner on 25 May 2020. Despite what Parkgate says, this isn't the same as saying that it's responsible for a two-month delays.

On balance, I'm satisfied that the hypothetical timeline proposed by the investigator is fair and reasonable and takes into account the fact that two other parties were involved in the process, which took place during the early days of a government imposed lockdown in the midst of a global Covid-19 pandemic.

Based on the investigator's preliminary calculations – which I don't think are necessary to repeat – I also don't think the £2,800 redress offered by Parkgate – contingent upon the transferor and transferee accepting equal fault – is fair or reasonable in the circumstances.

To put things right, I think Parkgate should compare the value Mr W received from the sale of his Airbus shares on 16 September 2020, with the value he would've received from the sale of the shares (on 16 September 2020) had he purchased them on 25 May 2020 using the transferred cash. And if there's a difference, Parkgate should pay that loss with 8% simple interest from the date of settlement (16 September 2020) to the date of payment.

I note the investigator broke this down into two parts. He said Parkgate should compare how many Airbus shares Mr W purchased on 10 June 2020, with what he would've been able to purchase on 25 May 2020 using the same cash. It should then calculate what Mr W would've received from the sale of those 'additional' Airbus shares on 16 September 2020 and pay the amount with 8% simple interest from the date of payment to the date of settlement. The above notwithstanding, I think the £200 compensation offered for the distress and inconvenience caused is broadly fair and reasonable in the circumstances.

Mr W and Parkgate have provided detailed submissions to support the complaint, which I've read and considered carefully. However, I hope they won't take the fact my findings focus on what I consider to be the central issues, and not in as much detail, as a discourtesy.

The purpose of my decision isn't to address every single point or question raised under a separate subject heading, it's not what I'm required to do in order to reach a decision in this

case. I appreciate this can be frustrating, but it doesn't mean I'm not considering the pertinent points.

My role is to consider the evidence presented by Mr W and Parkgate, and reach what I think is an independent, fair and reasonable decision based on the facts of the case, rather than take any sides.

In deciding what's fair and reasonable, I must consider the relevant law, regulation and best industry practice, but perhaps unlike a court or tribunal I'm not bound by this. It's for me to decide, based on the information I've been given, what's more likely than not to have happened.

I don't think there's any dispute that the decision to sell all of Mr W's shares, and the purchase of Airbus shares – as per his initial instructions to Parkgate dated 19 March 2020 – were non-advised.

In other words, I acknowledge that Mr W decided this course of action of his own volition without any advice or guidance from Parkgate. I note that the issue regarding advice or lack thereof, is not the subject of this complaint. The process by which Parkgate carried out Mr W's instructions to sell his shares (and purchase Airbus shares) is very much the subject of this complaint.

I'm aware that there were two other businesses – the transferor and the transferee – which were also involved in this process. However, in this case I'm only considering the actions of Parkgate. I'm aware that complaints against the transferor and transferee have been dealt with separately, and neither complaint was upheld.

Despite my decision to uphold this complaint, I acknowledge that Parkgate endeavoured to comply with Mr W's instructions and try and provide a positive outcome during these unprecedented and challenging times. I'm also aware that Parkgate found a platform (namely the transferee) that could facilitate the purchase of Airbus shares because the transferor couldn't.

I also acknowledge that Parkgate was involved in numerous emails over and above what it would normally have had to do, and it was generally prompt in its responses. Despite what Parkgate says, I don't think its conduct was hampered by its size or resources during the lockdown. In my opinion there's no criticism of it in that sense.

However, the above notwithstanding, I'm satisfied that a fundamental error was made by Parkgate, at the very outset, that caused delays that resulted in financial loss to Mr W. I note that on 21 April 2020, the transfer request – originally made by Parkgate on 25 March 2020 – was rejected by the transferor.

On 23 April 2020 the transferee notified Parkgate that the rejection was due to the suspended funds – namely the Threadneedle UK Property Authorised Trust Fund and the L&G fund – that were closed but couldn't be transferred as cash. I understand that those funds could only be transferred in-specie, but this issue wasn't addressed by Parkgate when the instructions were given to the transferor.

It seems that the transferor – as an execution only platform – completed the switch request on behalf of Mr W, as instructed by Parkgate. But despite what Parkgate says, I'm satisfied that the transferor made reasonably clear (at the outset) that it was unable to sell suspended shares as part of the request and therefore it was up to Parkgate to take appropriate action.

Based on a simulated snapshot of the customer journey – provided by the transferor – it seems that Parkgate, as part of its instructions, had to select the ‘sell all’ option for each individual line of stock. However, this option wasn’t available for the suspended funds, and instead the platform displayed the following message:

‘Restrictions apply to selling this fund. Please contact us for further information.’

Based on this information, I think Parkgate knew, or ought reasonably to have known, that there was an issue with the sale of the suspended funds therefore it should’ve contacted the transferor (as suggested) to discuss a way forward. On balance, I think that had Parkgate done so, it would’ve been reasonably clear that it needed to submit a partial transfer request so that Mr W could still buy the Airbus shares in a timely manner using his money.

I note a switch statement issued to Parkgate on 25 March 2020 also didn’t include the suspended stock which ought reasonably to have rung alarm bells. In the circumstances I don’t think it was necessary for the transferor to separately ‘advise’ Parkgate that it couldn’t sell suspended shares.

On the face of the evidence, and on balance, I agree with the investigator that if Parkgate had taken note of the information it had received, it could’ve submitted a partial transfer request at the outset, instead of when the request was rejected in April 2020. Despite what Parkgate says, in my opinion this error isn’t linked to the difficulties experienced by financial businesses during Covid-19 pandemic and lockdown.

I appreciate what Parkgate says about the different processes applied by the transferor and transferee, but I think the investigator in his hypothetical timeline took this into account and that’s why he started the 30 day timescale only once the parties had agreed the request.

In my opinion this also takes into account the subsequent need to submit a new request, as was the process – in manual paper form via post – rather than electronically. It also takes into account the difficulties faced by the transferor and transferee owing to the pandemic and lockdown. And that’s why, on balance I think the request made on 25 March 2020, was unlikely to complete until 22 May 2020 and the Airbus shares subsequently purchased on 25 May 2020.

In the circumstances I don’t think that Parkgate is responsible for the loss in value of the Airbus shares. The value is dependent on the stockmarket, and it seems Mr W accepts that it’s not something that Parkgate can predict or control, especially in a global pandemic which is likely to have an impact on the global stockmarket.

However, I think Parkgate is responsible for the additional Airbus shares Mr W could’ve bought – had the transfer completed a month sooner – and subsequently sell on 16 September as per Mr W’s plan.

For this reason, I don’t agree with Parkgate that Mr W hasn’t suffered a financial loss as a result of its error, and I why I think it should pay him redress as set out below.

Putting things right

To put things right, Parkgate FS LLP should compare the value Mr W received from the sale of his Airbus shares on 16 September 2020, with the value he would’ve received from the sale of the shares on 16 September 2020, had the Airbus shares been purchased on 25 May 2020, instead of 10 June 2020.

And if there's a difference, Parkgate should pay that loss with 8% simple interest from the date of settlement (16 September 2020) to the date of payment.

Parkgate FS LLP should also pay Mr W £200 compensation for the distress and inconvenience caused.

My final decision

For the reasons set out above, I uphold this complaint.

Parkgate FS LLP should calculate and pay redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 25 May 2022.

Dara Islam
Ombudsman