

The complaint

Mr R has complained about the time it has taken, and the treatment he has received from ITI Capital Limited ('ITI') when his account was migrated over from a previous firm. ITI didn't respond to his questions about how to withdraw from his account which he couldn't access.

What happened

In July 2020 Mr R's share account, which he held with a previous firm that had gone into administration, was transferred over to ITI. Mr R didn't want to hold his portfolio with ITI. He wanted to sell his shareholdings but was unable to access his account, withdraw funds or manage his holdings.

As a result of not being able to sell his shareholdings and withdraw his funds, Mr R's had to take money out of his cash ISA in order to pay an unexpected bill.

To put the matter right Mr R would like to know why ITI did not address his complaint, failed to inform him of his options and failed to inform him how he could bring his complaint to the Financial Ombudsman. Mr R wants compensation for any potential losses in the value of his shares from the point they were to be transferred to ITI to the date of sale.

Mr R complained to this service and in the meantime received a response to his complaint with ITI who upheld his complaint. It said;

- It recognised the client service it had offered to Mr R had fallen short of the standards it sought to deliver. The delays in the onboarding of his account were unacceptable.
- It apologised for the lack of access to his trading account caused by the high volumes of account access requests it had experienced as well as some technical issues because of the migration.
- ITI had a request on its system to transfer his holdings to another broker which was actioned on 18 August and which it said was currently in progress. It asked Mr R to confirm if he would like to make a withdrawal of his holdings or have them transferred to another broker. This would be passed onto the relevant team to action immediately.
- ITI offered its apologies for the extensive time it had taken to resolve the matters he had raised. It offered £75 for the inconvenience and/or distress he had been caused.

Our investigator who considered the complaint issued his opinion. He outlined what had caused the complaint and what had happened subsequently;

- Mr R had been in touch with the investigator in January 2022 and explained that he had needed to obtain dividend/corporate action information for his tax return but had been unable to access his account. ITI hadn't responded to his request so Mr R had to spend time researching the dividend history of his holdings for HMRC. I comment on this point further in my decision.
- Mr R provided us with details of his investment at the time ITI had taken over the account which were valued around £962 excluding delisted shares. In January 2022 Mr R had valued his holdings at around £1,100.

- Instead of using the funds from his liquidated portfolio with ITI Mr R had said he'd had to remove cash from his ISA to cover unexpected bills. ITI had never provided Mr R with the relevant paperwork to liquidate his holdings and it had incorrectly confirmed that he wanted to transfer his holdings to another broker. Despite him making clear his intentions.
- The investigator concluded ITI had treated Mr R unfairly so to put the matter right he recommended ITI do the following –
 - Liquidate Mr R's holdings and transfer the funds to his bank account
 - Provide a detailed summary of Mr R's investments and any dividends earned
 - Compensate Mr R for the distress and inconvenience suffered by increasing its offer to £300.
- The investigator didn't recommend compensating Mr R with any interest as despite him having to take cash out of his ISA to pay for an unexpected bill, Mr R wouldn't have earned any interest on the money he intended to withdraw from his portfolio which he would have used to pay the bill instead. And the increase in the value of his holdings was higher than interest Mr R would have earned from his cash ISA. If Mr R had been charged an early exit fee for withdrawing from his ISA, ITI should reimburse him.

ITI accepted the investigator's findings who in turn asked it to settle with Mr R directly.

Mr R wasn't happy with the timeliness of ITI's response and believed it should be referred to the FCA. He also asked for a finding on recompense for any shortfall should the funds he receive from sale of his shares be lower than at the time of the transfer to ITI.

The investigator explained to Mr R what had happened during the complaint process while at the Financial Ombudsman and the role of the FCA. With regard to any potential investment loss, ITI had said it had never received a withdrawal form from Mr R in which case we'd be unable to ask for compensation on his behalf.

Mr R was extremely unhappy with this response. He hadn't provided ITI with a withdrawal form as it hadn't asked for one. He reiterated that ITI hadn't responded to or resolved his complaint points. It was making charges to his account, had failed to tell him how to sell his holdings and had incorrectly locked his account in the transfer process. He hadn't been able to access his account for two years. ITI had completely failed to communicate with him.

Mr R provided further points for my consideration. He said he didn't take any action further to the final response letter as he had referred his complaint to the Financial Ombudsman and felt it was best placed to resolve the complaint. He said that had he known it would take as long as it has, he would have acted differently.

As the complaint remains unresolved, it has been passed to me for a decision.

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.

After doing so, I broadly agree with the conclusion reached by the investigator and I'm going to uphold the complaint. I don't think ITI has behaved reasonably however I think the £300 compensation recommended is broadly fair and reasonable.

I very much recognise Mr R's strength of feeling about his complaint. It's very clear he is, and has been, extremely frustrated and stressed by the process. I've considered the submissions he has made very carefully. And I hope he won't think I am being discourteous by not addressing all of the points he has made in any great detail. I've kept my focus in this decision on the core matters to the complaint.

In deciding what's fair and reasonable, I must consider the relevant law, regulation and best industry practice. But it's for me to decide, based on the available information I've been given, what's more likely than not to have happened.

As I understand it Mr R has recently raised two further complaints with ITI which have been brought to the Financial Ombudsman relating to his request for tax certificates and unfreezing his account. The first relates to ITI failing to respond to a request for tax certificates on 19 January 2022. And the second one raised on 26 May 2022 is about the recent problems he has had when trying to unfreeze his account, sell his shares and obtain withdrawal of his funds. So, my final decision will consider, and be limited to, what happened prior to that.

Withdrawal of Mr R's portfolio

On 3 August 2020 Mr R was sent a message that the issues he had been having in using ITI's online system had been resolved and with details about how to either onboard as a client or withdraw assets.

In Mr R's email response of the same day he confirmed that he had declined ITI's terms of business over a week before and wasn't presented with any other option after doing so – only that his request was 'processing'. He said that this didn't accord with the steps that ITI said needed to be taken. He also sent a follow up email on 18 August raising a complaint. And in that email, he also confirmed he wished to sell his holdings and not transfer them. He chased for a response again on 4 September.

In one of ITI's responses on 7 September 2020 it referred to Mr R using another broker and advised the status on his account had been changed so that when he logged on next he would be able to submit a withdrawal/transfer/closure request form. He should enter the account number of the third-party broker on that form. In a second email dated 9 September 2020 it confirmed his formal complaint and that it was being looked into.

I don't know the size of the client base that ITI took over from the previous provider that went into administration. But I think it's likely that the new additional accounts and investments will have had an impact on ITI's capacity and ability to deal with new customers and increased requests. And it seems evident there were some IT issues.

It's clear from the copies of various correspondence I have seen that emails etc were crossing over and responses were being sent to Mr R from various parties and departments at ITI with either standard information, which was being sent to all consumers, or responses specific to Mr R's account and queries. The responses and emails being sent to Mr R weren't 'joined up' at ITI's end.

I can't know how Mr R had gone about declining ITI's terms of business and what the implications of that were. Whether at that point he should have been given the option to either transfer or withdraw, as examples, but because of onboarding issues at ITI its system wasn't performing as it should. Mr R has said that his account was just showing as 'processing' and he couldn't access his account, hence him raising a complaint.

And while Mr R said in his email to ITI of 18 August that he wanted to sell his holdings and withdraw, it's clear that ITI had recorded that Mr R wanted to transfer his holdings as confirmed in its email to him of 7 September and also in its final response letter to him of 29 October 2020. So, there was a mismatch in what Mr R's intentions were and ITI's understanding of that.

In its submission to the Financial Ombudsman, ITI has said Mr R stated he wanted to transfer to a new provider, it had never received any transfer out instructions from his broker or himself. So, at this point I'm satisfied that ITI was still under the impression that Mr R wanted to transfer his portfolio but hadn't given any instruction up until then. So, it seems to me there was a genuine misunderstanding between the parties as to what action Mr R wanted to take.

I completely accept Mr R's point that he was already stressed and exhausted by his attempts at withdrawing his portfolio by the time he brought his complaint to the Financial Ombudsman and subsequently received a response to his complaint from ITI on 29 October.

However, I can't ignore the fact that in its final response to Mr R's complaint of 29 October 2020 it said that on its system there was a transfer request to another broker and that it was in progress. It continued 'Please confirm to me if you would like to make a withdrawal of your holdings or would like them transferred to another broker and I will personally pass this onto the relevant department to action immediately'.

Mr R has said that as he had already brought his complaint to the Financial Ombudsman when he received ITI's final response he forgot about the comment in ITI's final response letter about making contact. But I think this is a crucial point.

When ITI sent its message on 3 August that it had resolved its onboarding issues and gave details about how consumers should proceed I think this should have alerted Mr R to there being a potential problem with his attempt – around a week earlier – in trying to withdraw his account by not agreeing to its terms of business. And again, in ITI's email of 7 September and the final response letter reiterated ITI's understanding that Mr R wanted to transfer his portfolio rather than withdraw.

While Mr R was clear he had given an instruction on 18 August to withdraw his account, ITI's responses to him suggested otherwise. And I think at that point Mr R had an opportunity to address the misunderstanding, (and ITI told us it did send a withdrawal form to Mr R on 11 October 2020) however difficult and frustrating it must have been for him in making contact with ITI or the right person or team. If Mr R had responded to the question posed in ITI's final response letter, or completed the withdrawal form ITI said it sent, he would have had the opportunity to correct that misunderstanding.

In any relationship between a consumer and a business there are always opportunities for errors or misunderstandings. And it is how a business responds to that that is important. And despite Mr R's evident frustration I don't think ITI intended to cause this. I think it was working under stretched circumstances which resulted in Mr R not receiving the service that he should have done.

Putting things right

Is the offer fair?

That being said, it's clear Mr R has had a very difficult time during the whole process and I'm sure feels stressed and exhausted by the whole affair. The investigator acknowledged this,

as did ITI in its response by agreeing to the award recommended – increasing it from £75 that had previously been offered to £300.

Mr R wants recompense for any loss he has suffered between the date of migration of his account to ITI to the date he sells those investments. He's also referred to the cash he had to withdraw from his ISA in order to fund an unexpected bill which he would otherwise have paid from the proceeds received from his portfolio liquidation.

However, for the purposes of this complaint it seems unlikely that Mr R has suffered a financial loss. He told us that around the time of the migration his portfolio was valued at around £964 and which later had increased to around £1,100 suggest that Mr R's portfolio has benefited from the delays and he has received a better return than he would have received if he had kept his cash within the ISA. And while Mr R may argue this is just the benefit of the market, it is simply the case that there's no evidence Mr R has suffered a financial loss for me to consider for this complaint. And like the investigator, I think it unlikely Mr R would have earned interest on any liquidated proceeds as he has told us he would have used to them to pay the unexpected bill in any event.

Mr R has said that there are some charges debited to his account and as he didn't accept ITI's terms of business, those charges shouldn't be made. But I'd revert back to my comments that when Mr R declined those terms it's clear that ITI had suffered problems with its onboarding – or otherwise in the case of Mr R – and his instructions either hadn't been processed or processed incorrectly. And by not taking up the opportunity given to Mr R in not responding to ITI's questions in its final response letter, ITI continued to administer his account in the absence of any instruction to the contrary. So, I don't think ITI was wrong in making those charges.

ITI's response to Mr R's complaint and Financial Ombudsman referral rights

Mr R raised a complaint with ITI in his email of 18 August 2020. He then chased for details about how to bring his complaint to the Financial Ombudsman about his complaint on 14 October as it remained unresolved after eight weeks.

I note Mr R recognised ITI's responses to him were not aligned with his actual requests. And as I've said above, the responses he did receive were from different departments at ITI and not 'joined up' which must have been very frustrating for him. However, in its final response to his complaint on 29 October it did give referral rights to the Financial Ombudsman and by that time he had already brought his complaint to us on 17 October. So, while ITI's response to him took longer than it should have done and Mr R would have liked, I can't see that he has been disadvantaged by this.

No doubt Mr R will be disappointed in my decision and not to uphold it any further than I have done. But I hope I have been able to explain to him how and why I have reached that decision.

My final decision

I uphold Mr R's complaint about the service he received from ITI Capital Limited. It is for Mr R to decide whether to accept the offer of £300 already made.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 6 October 2022.

Catherine Langley

Ombudsman