

## **The complaint**

Mrs and Mr P complain about the service provided by Halifax Share Dealing Limited (HSDL) whilst trying to open an account during the transfer of their ISA from a third-party to HSDL.

Mr P says they've suffered financial loss.

## **What happened**

On 31 December 2019 Mr P wrote to HSDL asking to transfer his ISA from a third-party to HSDL. He wanted the application form to be posted to him as he didn't want to use the online services. I understand HSDL received this letter on 8 January 2020.

HSDL says on 15 January 2020, it wrote to Mr P providing instructions on how to register for an account online and how to initiate a transfer.

On 23 January 2020, Mr P called HSDL – although HSDL says an agent called Mr P – in any event it offered to do a manual registration over the phone, but Mr P wanted to see a hard copy of the terms and conditions before going ahead. HSDL agreed to send the documentation in the post, but it was never received by Mr P.

On 12 June 2020, HSDL received a letter from Mr P dated 8 June 2020, with the subject title 'potential complaint' and so was forwarded to HSDL's complaint's department.

On 24 June 2020, Mr P was sent an incorrectly dated letter (dated 15 January 2020) re-confirming instructions on how to register online, and a brief breakdown of online charges and dealing commission.

On 2 July 2020, HSDL says it received Mr P's letter detailing the previous issues. HSDL responded on 6 July detailing how they could register an account by calling the contact centre or by applying online in some branches.

Despite telling the business that he didn't want to use its online services, Mr P was still directed to it.

The business partially upheld the complaint on the basis its service didn't meet expectations and offered Mrs and Mr P £100 compensation for the distress and inconvenience caused. It said it hasn't seen evidence that Mr P's request for the terms and conditions, order handling policy and costs and charges booklet was actioned. I note a copy of the requested documentation was also sent.

One of our investigators considered the complaint but didn't think it should be upheld. In summary, she said:

- There's no evidence that Mrs and Mr P were advised to transfer their ISA to HSDL and invest in preference shares. HSDL has confirmed that even if they were its customers – which they weren't – it wouldn't have offered advice, as it's an execution only service.

- HSDL accepts that the service Mrs and Mr P received fell below standard.
  - Mr P repeatedly made clear that he didn't want to use HSDL's online service, and HSDL kept referring him to it.
  - Mr P asked for hard copies of the terms and conditions and these were never supplied.
  - There was a delay of several months, before HSDL detailed how to register for an account via the telephone or in branch.
- The £100 compensation offered by the business is broadly fair and reasonable.

Mrs and Mr P disagreed with the investigator's view and asked for an ombudsman's decision. There's been much correspondence between Mrs and Mr P and our investigator, but, in summary, they said:

- The view is cursory and the conclusion illogical.
- The investigator has failed to deal with the deception deeply embedded in this case.
- She has omitted historic points of relevance in this case and hasn't referred to the inefficiency of our service.
- He hasn't claimed that he was 'advised' to invest in the preference shares resulting in financial loss.
- He's been trading since 2001 and knows much about it. HSDL knew in January 2020, that he's always been an execution only client.
- The view contained specific inaccuracies undermining its thrust. The few months referred to by the investigator, was in fact 'six months' and after he received the final response letter.

The investigator having considered the additional points wasn't persuaded to change her mind. In summary she said she was sorry that Mrs and Mr P didn't agree but an ombudsman would consider all the points afresh. Despite what Mr P said about the previous complaint and its purported relevance to the current complaint, the onus was still on Mr P to provide any evidence he wanted us to consider and it's not for us to cross reference cases.

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.

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'm not going to uphold this complaint.

On the face of the evidence, and on balance, despite what Mrs and Mr P say, I think the offer of redress is broadly fair and reasonable in the circumstances.

I'm not persuaded that HSDL has done anything wrong in the circumstances, such that it should offer any compensation, over the £100 already offered.

But before I explain why this is the case, I think it's important for me to recognise Mrs and Mr P's, strength of feeling about this matter. I'm sorry to hear about Mrs P's deteriorating health. I appreciate it must be a difficult time for Mr P as her sole carer.

Mr P's provided detailed submissions to support this complaint, which I've read and considered carefully. However, I hope that he and Mrs P 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. I'm not going to list all of the correspondence provided by them, it's not necessary for me to do so in order to reach a decision in this case.

The purpose of my decision also isn't to address every single point raised. My role is to consider the evidence presented by Mrs and Mr P, and HSDL, and reach what I think is an independent, fair and reasonable decision based on the facts of the case.

In deciding what's fair and reasonable, I must take into account the relevant law, regulation and best industry practice, but 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 note Mrs and Mr P maintain that this complaint arose out of our service's failure to deal with Mr P's previous complaint against the transferor which an ombudsman found was out of jurisdiction. Regardless of how Mr P thinks this complaint arose, in this instance I'm only considering the complaint against HSDL.

I also note Mr P's view regarding the previous complaint and its relevance, particularly in relation to what he feels should've been considered as the date of the final response letter – 4 March 2019 and not 10 April 2018 – but that's not the subject of this complaint.

I note Mrs and Mr P are also unhappy about the service they received from us and are considering making/have made a service complaint. I'm aware Mr P is unhappy about correspondence not being dealt with properly, staff working from home and potential delays. He's very concerned that he's being failed again by our service, in the same way that he was purportedly failed by the previous ombudsman and investigator. But that's not the point of my decision, I'm not here to re-consider the previous complaint, or the service Mrs and Mr P received from our service both of which are separate matters – I'm only here to consider the complaint against HSDL.

I appreciate Mr P feels that his case wasn't a complaint until HSDL treated his correspondence as such, but given the nature and tone of his correspondence – culminating in the letter dated 8 June 2020 titled 'potential complaint' – I'm unable to say that HSDL has done anything wrong by treating Mr P's letter as a complaint. I also don't think it did anything wrong by continuing to respond to his letters.

On the face of the evidence, it seems Mrs and Mr P chose to transfer their holdings to HSDL without advice. In other words, I can't safely say that they were 'advised' by HSDL to take this course of action. I'm aware Mr P maintains HSDL knew he was an execution only client since January 2020. Furthermore, he wasn't 'advised' to invest in the preference shares (resulting in financial loss); he's been trading since 2001; knows much about it and that HSDL knew in January 2020 that he's always been an execution only client.

The above explains why I've seen no evidence from the point of transfer that advice was either sought, or given, regarding the suitability of the transfer by HSDL. I've also not seen a suitability/recommendation letter or fact find that suggests advice was given.

I'm aware that Mr P initiated contact with HSDL before seeing the terms and conditions, which he then requested during a phone call dated 23 January 2020– it's not material who initiated that contact, but it was probably Mr P. I note during that call HSDL tried to set up an account for him so that he could initiate the transfer request but Mr P didn't want to go ahead without seeing key policy documentation and terms and conditions. In the circumstances, and on balance, I'm unable to blame the business for Mrs and Mr P not being able to set up an account via the telephone – as an alternative to doing it online – within a reasonable time.

I'm satisfied they chose not to go ahead with this at the time for their own reasons which I can't hold the business responsible for.

I note HSDL has confirmed that Mrs and Mr P weren't its customers so it wouldn't have offered them advice, and, in any case, it only offered an execution only service so there was no chance of them being 'advised' about what they should or shouldn't do.

I'm aware the decision to transfer was as a result of the previous provider deciding to terminate its relationship with Mrs and Mr P. Therefore, it's likely that they chose to invest of their own volition, so, in the circumstances, it's not possible for me to look into the "suitability" of their decision.

I note in a letter dated 12 December 2019, the previous provider said:

*"Over the past 18 months there has been a great deal of correspondence between us which has not resolved your issues. There is little else that we can do for you to assist in your investigations.*

*Upon deliberation we no longer believe the existing business-client relationship to be tenable between us.*

*As such, we are requesting that you engage with another ISA provider. They will provide us with the relevant transfer out paperwork. Should we receive the relevant transfer out paperwork prior to 30 January 2020 we will waive the transfer out fee."*

In the circumstances, I'm satisfied that the onus was on Mrs and Mr P to make sure the ISA transfer was suitable for their circumstances, and they were happy with HSDL's facilities. If they were unsure or didn't want to use the online facilities – which are generally there to simplify and speed up the process – they were entitled to seek alternative ways of opening an account, seek financial advice or just go elsewhere. It seems they did seek an alternative way to open the account – following the initial attempt to set up an account via the phone – but matters were delayed because HSDL hadn't actioned their request for the key documents and terms and conditions.

I appreciate Mr P (repeatedly) made clear that he didn't wish to use the online HSDL services, including from the very outset when he sent his letter in 2019. But in the circumstances, I don't think referring Mr P to the online service was done deliberately to cause him and Mrs P distress and inconvenience. Rather I think letters were probably sent to him/them in error, probably as a result of an automated system. I note that's why HSDL offered £100 compensation for the distress and inconvenience caused by its poor service which I think is broadly fair and reasonable in the circumstances.

In any case, it could be argued that it was for Mrs and Mr P to decide whether or not they wanted to open an account and continue with HSDL or go elsewhere which is why on balance I'm not persuaded it's responsible for any financial loss they may have suffered.

Based on what Mr P says, I'm aware that the responses from other providers was negative and they were attracted by the fees from HSDL, which might explain why they continued with HSDL and decided to wait for its documentation before going ahead.

I'm aware it was several months before Mr P was again told how he could register an account via the telephone, or by coming into branch. As I mentioned above, this was an execution only service, so it would've been for them to decide whether or not they wished to continue with the service or go elsewhere, and they would've known since January 2020 that they had the option to set up an account via the telephone.

I appreciate Mrs and Mr P will be unhappy I've reached the same conclusion as the investigator. I realise my decision isn't what they want to hear. Whilst I appreciate their frustration, I'm unable to uphold this complaint and give them what they want.

**My final decision**

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P and Mr P to accept or reject my decision before 21 September 2022.

Dara Islam  
**Ombudsman**